

2-18-2015

State v. Neal Clerk's Record Dckt. 42806

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	
)	
vs.	)	Supreme Court No. 42806
)	
BRIAN E. NEAL,)	
)	
Defendant-Respondent.)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District,
in and for the County of Nez Perce

HONORABLE JEFF M. BRUDIE, DISTRICT JUDGE

Attorney for Respondent

SARA B. THOMAS
State Appellate PD
3050 Lake Harbor Ln, Ste 100
Boise, ID 83703

Attorney for Appellant

LAWRENCE G. WASDEN, AG
P.O. Box 83720
BOISE, ID 83720-0010

State of Idaho vs. Brian Ellis Neal

Date	Code	User		Judge
4/24/2014	NCRF	SHELLIE	New Case Filed-Felony	Greg K. Kalbfleisch
	PROS	SHELLIE	Prosecutor Assigned Sandra K. Dickerson	Greg K. Kalbfleisch
	COSM	SHELLIE	Complaint & Summons (Misdemeanor) receipt style citation	Greg K. Kalbfleisch
	IDPC	SHELLIE	Initial Determination Of Probable Cause	Greg K. Kalbfleisch
	AFPC	SHELLIE	Affidavit Of Probable Cause (Felonies)	Greg K. Kalbfleisch
	IDPC	SHELLIE	Initial Determination Of Probable Cause	Greg K. Kalbfleisch
	CRCO	SHELLIE	Criminal Complaint	Greg K. Kalbfleisch
	NORF	SHELLIE	Notification Of Rights-felony	Greg K. Kalbfleisch
	NORM	SHELLIE	Notification Of Rights-misdemeanor	Greg K. Kalbfleisch
	CHJG	SHELLIE	Change Assigned Judge	Kent J. Merica
	ARRN	SHELLIE	Arraignment / First Appearance	Kent J. Merica
		SHELLIE	Commitment, Held to Answer	Kent J. Merica
	BSET	TRISH	Bond Set at 50000.00	Kent J. Merica
	CHJG	TRISH	Change Assigned Judge	Greg K. Kalbfleisch
	HRSC	TRISH	Hearing Scheduled (Preliminary Hearing 05/07/2014 01:30 PM)	Greg K. Kalbfleisch
	ORPD	TRISH	Defendant: Neal, Brian E Order Appointing Public Defender Public defender. Kwate Law Office PD 2014	Greg K. Kalbfleisch
	AFPD	TRISH	Affidavit of Financial Status and Order Appointing Public Defender	Greg K. Kalbfleisch
	NTHR	TRISH	Notice Of Hearing	Greg K. Kalbfleisch
4/25/2014	CRCO	TRISH	Criminal Complaint Citations downloaded	Greg K. Kalbfleisch
4/28/2014	RQDD	JENNY	Request For Discovery-defendant	Greg K. Kalbfleisch
5/2/2014	RSDP	JENNY	Response To Request For Discovery-plaintiff	Greg K. Kalbfleisch
5/7/2014	RSDP	JENNY	First Supplemental Response To Request For Discovery-plaintiff	Greg K. Kalbfleisch
	MINE	DONNA	Minute Entry Hearing type: Preliminary Hearing Hearing date: 5/7/2014 Time: 1:31 pm Courtroom: Court reporter: None Minutes Clerk: Evans Tape Number: ctrm 3 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson	Carl B. Kerrick
	CONT	JENNY	Hearing result for Preliminary Hearing scheduled on 05/07/2014 01:30 PM: Continued	Greg K. Kalbfleisch
	CHJG	JENNY	Change Assigned Judge	Kent J. Merica

State of Idaho vs. Brian Ellis Neal

Date	Code	User	Judge
5/7/2014	HRSC	JENNY	Hearing Scheduled (Preliminary Hearing 05/14/2014 01:30 PM)
	NTHR	BDAVENPORT	Notice Of Hearing
5/8/2014	RSDP	JENNY	Second Supplemental Response To Request For Discovery-plaintiff
5/14/2014	MINE	MEENA	Minute Entry Hearing type: Preliminary Hearing Hearing date: 5/14/2014 Time: 2:04 pm Courtroom: Court reporter: Minutes Clerk: Cole Tape Number: ctrm 2 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson
	BOUN	MEENA	Hearing result for Preliminary Hearing scheduled on 05/14/2014 01:30 PM: Bound Over (after Prelim)
	CHJG	MEENA	Change Assigned Judge
	HRSC	MEENA	Hearing Scheduled (Arraignment 05/21/2014 09:00 AM)
		MEENA	Notice Of Hearing
5/15/2014	ORBO	MEENA	Order Binding Over
	APTR	JANET	Application For Transcript
5/19/2014	INFO	JANET	Information
5/21/2014	DCHH	JANET	District Court Hearing Held Court Reporter: carlton Number of Transcript Pages for this hearing estimated: less than 100 pgs
	HRHD	JANET	Hearing result for Arraignment scheduled on 05/21/2014 09:00 AM: Hearing Held
	HRSC	JANET	Hearing Scheduled (Jury Trial 09/15/2014 09:00 AM)
	HRSC	JANET	Hearing Scheduled (Final Pretrial 09/03/2014 11:00 AM)
	HRSC	JANET	Hearing Scheduled (Pretrial Motions 08/20/2014 11:00 AM)
	MINE	JANET	Minute Entry Hearing type: Arraignment Hearing date: 5/21/2014 Time: 9:07 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Justin Coleman

State of Idaho vs. Brian Ellis Neal

Date	Code	User	Judge
5/21/2014	ORDR	JANET	Order to Prepard Transcript of Preliminary Hearing (Assigned to Nancy Towler)
5/22/2014	ORDR	JANET	Order Setting Jury Trial
5/23/2014	RSDP	JANET	3rd Supp Response To Request For Discovery-plaintiff
5/27/2014	TRAN	JANET	Transcript Filed
6/5/2014	MOTN	JANET	Motion to Withdraw
	AFFD	JANET	Affidavit in Support of Motion to Withdraw
6/9/2014	HRSC	JANET	Hearing Scheduled (Motion for Leave to Withdraw as Attorney 06/18/2014 11:00 AM)
6/18/2014	DCHH	JANET	District Court Hearing Held Court Reporter: carlton Number of Transcript Pages for this hearing estimated: less than 100 pgs
	DENY	JANET	Hearing result for Motion for Leave to Withdraw as Attorney scheduled on 06/18/2014 11:00 AM: Motion Denied
6/23/2014	MINE	JANET	Minute Entry Hearing type: Motion for Leave to Withdraw as Attorney Hearing date: 6/18/2014 Time: 11:29 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson
8/1/2014	AMIN	JANET	Amended Information
	MOTN	JANET	Motion to Suppress Evidence
8/14/2014	STIP	SHELLIE	Stipulation to Vacate Jury Trial and Set for Status Conference (D)
8/15/2014	ORDR	BDAVENPORT	Order Vacating Jury Trial and Setting Status Conference
8/18/2014	HRVC	JANET	Hearing result for Jury Trial scheduled on 09/15/2014 09:00 AM: Hearing Vacated
	HRVC	JANET	Hearing result for Final Pretrial scheduled on 09/03/2014 11:00 AM: Hearing Vacated
	HRVC	JANET	Hearing result for Pretrial Motions scheduled on 08/20/2014 11:00 AM: Hearing Vacated Def Mtn to Suppress
	HRSC	JANET	Hearing Scheduled (Status Conference 09/03/2014 11:00 AM)

State of Idaho vs. Brian Ellis Neal

Date	Code	User	Judge
9/3/2014	DCHH	JANET	District Court Hearing Held Court Reporter:carlton Number of Transcript Pages for this hearing estimated:less than 100 pgs
	HRHD	JANET	Hearing result for Status Conference scheduled on 09/03/2014 11:00 AM: Hearing Held
	HRSC	JANET	Hearing Scheduled (Jury Trial 11/17/2014 09:00 AM)
	HRSC	JANET	Hearing Scheduled (Final Pretrial 11/05/2014 11:00 AM)
	HRSC	JANET	Hearing Scheduled (Scheduling Conference 10/01/2014 09:00 AM)
9/4/2014	MINE	JANET	Minute Entry Hearing type: Status Conference Hearing date: 9/3/2014 Time: 12:06 pm Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson
9/8/2014	ORDR	JANET	Amended Order Setting Jury Trial
	BRFD	SHELLIE	Brief in Support of Motion to Suppress Evidence (D)
9/23/2014	RSDP	JANET	Response To Def's Motion to Suppress-plaintiff
10/1/2014	DCHH	JANET	District Court Hearing Held Court Reporter:carlton Number of Transcript Pages for this hearing estimated:less than 100 pgs
	HRHD	JANET	Hearing result for Scheduling Conference scheduled on 10/01/2014 09:00 AM: Hearing Held
	HRSC	JANET	Hearing Scheduled (Pretrial Motions 10/29/2014 11:00 AM) Mtn to Suppress
	MINE	JANET	Minute Entry Hearing type: Status/Scheduling Conference Hearing date: 10/1/2014 Time: 9:37 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson
10/15/2014	SUBR	JANET	Subpoena Returned served on Kenneth Yount
10/29/2014	CONT	JANET	Continued (Pretrial Motions 10/31/2014 10:30 AM) Mtn to Suppress

State of Idaho vs. Brian Ellis Neal

Date	Code	User	Judge
10/30/2014	CONT	JANET	Continued (Pretrial Motions 10/31/2014 10:45 AM) Mtn to Suppress Jeff M. Brudie
10/31/2014	MINE	TERESA	Minute Entry Hearing type: Pretrial Motions/def mtn suppress Hearing date: 10/31/2014 Time: 10:36 am Courtroom: Court reporter: NO COURT REPORTER PRESENT Minutes Clerk: TERESA Tape Number: CRTRM 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson Jeff M. Brudie
	HRHD	JANET	Hearing result for Pretrial Motions scheduled on 10/31/2014 10:45 AM: Hearing Held Mtn to Suppress Jeff M. Brudie
11/5/2014	DCHH	JANET	District Court Hearing Held Court Reporter: carlton Number of Transcript Pages for this hearing estimated: less than 100pgs Jeff M. Brudie
	CONT	JANET	Continued (Final Pretrial 11/12/2014 11:00 AM) Jeff M. Brudie
	MINE	JANET	Minute Entry Hearing type: Final Pretrial Hearing date: 11/5/2014 Time: 10:56 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Justin Coleman Jeff M. Brudie
11/7/2014	OPOR	JANET	Opinion & Order on Defendant's Motion to Suppress Jeff M. Brudie
11/10/2014	MOTN	MEENA	Motion For Reconsideration Jeff M. Brudie
11/12/2014	DCHH	JANET	District Court Hearing Held Court Reporter: carlton Number of Transcript Pages for this hearing estimated: less than 100 pgs Jeff M. Brudie
	HRVC	JANET	Hearing result for Jury Trial scheduled on 11/17/2014 09:00 AM: Hearing Vacated Jeff M. Brudie
	HRHD	JANET	Hearing result for Final Pretrial scheduled on 11/12/2014 11:00 AM: Hearing Held Jeff M. Brudie
	HRSC	JANET	Hearing Scheduled (Hearing on Motions 12/03/2014 11:00 AM). State's mtn for reconsideration Jeff M. Brudie

State of Idaho vs. Brian Ellis Neal

Date	Code	User	Judge
11/12/2014	MINE	JANET	Minute Entry Hearing type: Final Pretrial Hearing date: 11/12/2014 Time: 11:36 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson Jeff M. Brudie
11/28/2014	MISC	JANET	Def's Response to State's Motion for Reconsideration Jeff M. Brudie
12/3/2014	DCHH	JANET	District Court Hearing Held Court Reporter: carlton Number of Transcript Pages for this hearing estimated: less than 1 00 pgs Jeff M. Brudie
	ADVS	JANET	Hearing result for Hearing on Motions scheduled on 12/03/2014 11:00 AM: Case Taken Under Advisement State's mtn for reconsideration Jeff M. Brudie
12/11/2014	MINE	JANET	Minute Entry Hearing type: Hearing on Motions Hearing date: 12/3/2014 Time: 11:15 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: JANET Tape Number: 1 Defense Attorney: Kwate Law Office PD 2014 Prosecutor: Sandra Dickerson Jeff M. Brudie
	OPOR	JANET	Opinion & Order on the State's Motion for Reconsideration Jeff M. Brudie
	AFFD	JANET	Affidavit of Defendant (faxed 12/2/14) Jeff M. Brudie
12/16/2014	NTAP	BDAVENPORT	Notice Of Appeal Jeff M. Brudie
	APSC	BDAVENPORT	Appealed To The Supreme Court Jeff M. Brudie
1/6/2015	MOTN	SHELLIE	Motion to Withdraw and to Appoint State Appellate Public Defender (D) Jeff M. Brudie
1/9/2015	ORDR	DEANNA	Order Allowing Withdrawal of Attorney and Appointing SAPD Jeff M. Brudie
	ATTR	DEANNA	Defendant: Neal, Brian Ellis Attorney Retained Sara B Thomas Jeff M. Brudie

Idaho State Police - Uniform Citation

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:



Citation #:

ISP0283513

Date/Time: **04/24/2014 12:53 AM**

DR#: **L14000346**

IN THE DISTRICT COURT OF THE **2ND**
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF **NEZ PERCE**
STATE OF IDAHO

CR14-03285

VIOLATOR

Last Name: **NEAL**

MI: **E**

First Name: **BRIAN**

Hm. Address: **3613 W AGATE ST**

Hm. Phone:

City: **PASCO**

State: **WA** Zip: **99301**

Height: **600** Weight: **200** Sex: **M** Eyes: **BLU** Hair:

Class: **7** State: **WA** Lic. Expires: **2018**

Hazmat: **N** GVWR 26001+: **N** 16+ Persons: **N**

Commercial vehicle driven by this driver: **N**

Bus. Name:

Bus. Addr.:

Bus. Phone:

REGISTRATION

Yr. Veh: **2005**

Veh. Lic. #: **ANW0187**

State: **WA**

Make: **PONT**

Model: **BONNEVILLE**

Color: **BLK**

Style: **4D**

VIN: **1G2HZ54Y75U102339**

Carrier US DOT #:

LOCATION

Upon a Public Street or Highway or Other Location Namely:

WESTBOUND US12 MP 1.5

VIOLATIONS

Did commit the following Offense(s), in violation of State Statute.

Infraction Citation: **N**

Misdemeanor Citation: **Y**

Posted Speed:

Observed Speed:

Accident: **N**

Date/Time: **04/24/2014 12:41 AM**

Violation #1: **I37-2734A(1)**

**DRUG PARAPHERNALIA-POSSESS WITH INTENT TO USE
(USED SYRINGES, SCALE W/CRYSTAL RESIDUE)**

Violation #2: **I37-2732(c)(3)(M)**

**CONTROLLED SUBSTANCE-POSSESSION OF SCHEDULE III
HYDROCODONE (4 PILLS)**

Violation #3:

Violation #4:

COURT INFORMATION

NEZ PERCE COUNTY MAGISTRATE COURT

1230 MAIN STREET

LEWISTON, ID 83501

(208) 799-3043

Court Date: **05/09/2014**

Court Time: **09:30 AM**

Fine#1: **MUST APPEAR**

Fine#2: **MUST APPEAR**

Fine#3:

Fine#4:

SIGNATURE

I hereby certify service upon the defendant personally on ☒ 04/24/2014

Signature of Officer:

Officer name: **K YOUNT**

Officer ID: **3300**

Agency Name: **IDAHO STATE POLICE**

Witnessing Officer/Party:

Witnessing Officer/Party Address:

Department:

Serial #:

Idaho State Police - Uniform Citation

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:

ORIGINAL

Citation #: **ISP0283513**

DR#: **L14000346**

Date/Time: **04/24/2014 12:53 AM**

IN THE DISTRICT COURT OF THE 2ND
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF NEZ PERCE
STATE OF IDAHO

CR 14-03285

VIOLATOR

Last Name: **NEAL**

MI: **E**

First Name: **BRIAN**

Hm. Address: **3613 W AGATE ST**

Phone:

Cty, St, Zip: **PASCO, WA 99301**

Height: **600** Weight: **200** Sex: **M** Eyes: **BLU** Hair:

State: **WA** Lic. Expires: **2018**

Class:

Hazmat: **N** GVWR 26001+: **N** 16+ Persons: **N**

Commercial vehicle driven by this driver: **N**

Bus. Name:

Bus. Addr:

Bus. Phone:

REGISTRATION

Yr. Veh: **2005**

Veh. Lic #: **ANW0187**

State: **WA**

Make: **PONT**

Model: **BONNEVILLE**

Color: **BLK**

Style: **4D**

VIN: **1G2HZ54Y75U102339**

Carrier US DOT #:

LOCATION

Upon a Public Street or Highway or Other Location Namely:

WESTBOUND US12 MP 1.5

VIOLATIONS

Did commit the following Offense(s), In violation of State Statute,

Infraction Citation: **N**

Misdemeanor Citation: **Y**

Posted Speed:

Observed Speed:

Accident: **N**

Date/Time: **04/24/2014 12:41 AM**

Violation #1: **I37-2734A(1)**

DRUG PARAPHERNALIA-POSSESS WITH INTENT TO USE (USED SYRINGES SCALE W/CRYSTAL RESIDUE)

Violation #2: **I37-2732(c)(3) (M)**

CONTROLLED SUBSTANCE-POSSESSION OF SCHEDULE III HYDROCODONE (4 PILL)

Violation #3:

Violation #4:

COURT INFORMATION

NEZ PERCE COUNTY MAGISTRATE COURT

1230 MAIN STREET

LEWISTON, ID 83501

(208) 799-3043

Court Date: **05/09/2014**

Court Time: **08:30 AM**

Fine #1: **MUST APPEAR**

Fine #2: **MUST APPEAR**

Fine #3:

Fine #4:

SIGNATURE

I hereby certify service upon the defendant personally on **04/24/2014**

Signature of Officer:

Officer Name: **K YOUNT**

Officer ID: **3300**

Agency Name: **IDAHO STATE POLICE**

Witness:

Address:

Department:

Serial #:

OFFICER NOTES

READ CAREFULLY

This is a MISDEMEANOR charge in which:

NOTE: If you fail to appear within the time allowed for your appearance, another charge of failure to appear may be filed and a warrant may be issued for your arrest.

1. You may be represented by a lawyer, which will be at your expense unless the judge finds you are indigent.
2. You are entitled to a trial by jury if requested by you.
3. PLEA OF NOT GUILTY: You may plead not guilty to the charge by appearing before the clerk of the court or the judge, within the time allowed for your appearance, at which time you will be given a trial date.
4. PLEA OF GUILTY: You may plead guilty to the charge by going to the clerk of the court, within the time allowed for your appearance, at which time you will be told if you can pay a fixed fine or whether it will be necessary for you to appear before the judge;
5. If you plead guilty, you may still give an explanation to the judge.
6. You may call the clerk of the court to determine if you can sign a plea of guilty and pay the fine and costs by mail or over the Internet by going to: <http://courtpay.idaho.gov>

I plead guilty to the charges.

Defendant (if authorized by clerk of magistrate court)

MAIL TO:

NEZ PERCE COUNTY MAGISTRATE COURT

PO BOX 896

LEWISTON, ID 83501

FILED

APR 25 AM 7

JATTY O. WELLS

CLERK OF THE DIST. COURT

Idaho State Police - Uniform Citation

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:

ORIGINAL

Citation #: **ISP0283512**

Date/Time: **04/24/2014 12:53 AM**

DR#:

IN THE DISTRICT COURT OF THE 2ND
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF NEZ PERCE
STATE OF IDAHO

CR14-03285

VIOLATOR

Last Name: **NEAL** MI: **E**
First Name: **BRIAN**
Hm. Address: **3613 W AGATE ST** Phone:
City, St, Zip: **PASCO, WA 99301**
Height: **600** Weight: **200** Sex: **M** Eyes: **BLU** Hair:
Class: **DL State: WA Lic. Expires: 2018**
Hazmat: **N** GVWR 26001+: **N** 16+ Persons: **N**
Commercial vehicle driven by this driver: **N**
Bus. Name:
Bus. Addr:
Bus. Phone:

REGISTRATION

Yr. Veh: **2005** Veh. Lic #: **ANW0187** State: **WA**
Make: **PONT** Model: **BONNEVILLE**
Color: **BLK** Style: **4D**
VIN: **1G2HZ54Y75U102339**
Carrier US DOT #:

LOCATION

Upon a Public Street or Highway or Other Location Namely:
WESTBOUND US12 MP 1.5

VIOLATIONS

Did commit the following Offense(s), In violation of State Statute,
Infraction Citation: **Y** Misdemeanor Citation: **N**
Posted Speed: Observed Speed: Accident: **N**
Date/Time: **04/24/2014 12:41 AM**

Violation #1: **I49-1232**

VEHICLE INSURANCE-FAIL TO PROVIDE PROOF OF INSURANCE

Violation #2:

Violation #3:

Violation #4:

COURT INFORMATION

NEZ PERCE COUNTY MAGISTRATE COURT
1230 MAIN STREET
LEWISTON, ID 83501
(208) 799-3043
Court Date: **05/09/2014**
Court Time: **08:30 AM**

Fine #1: **131.50**
Fine #2:
Fine #3:
Fine #4:

SIGNATURE

I hereby certify service upon the defendant personally on **04/24/2014**

Signature of Officer:

Officer Name: **K YOUNT**

Officer ID: **3300**

Agency Name: **IDAHO STATE POLICE**

Witness:

Address:

Department:

Serial #:

OFFICER NOTES

READ CAREFULLY

This is an INFRACTION charge in which:

NOTE: If you fail to appear within the time allowed for your appearance, judgment will be entered against you. Failure to pay the penalty could result in your license being suspended.

1. You may be represented by a lawyer at your expense.
2. You are entitled to a trial before a judge, but you do not have a right to a trial by jury.
3. If you admit the offense or are found to have committed the offense, your fixed penalty and costs cannot be increased or decreased by the judge.
4. DENIAL OF CHARGE. If you do not feel you committed the offense you may appear before the clerk of the court and DENY the charge, or you may indicate your denial below, within the time allowed for your appearance, and you will be given a trial date by the clerk.

I DENY THE VIOLATION ☐ #1 ☐ #2 ☐ #3 ☐ #4

A court trail will be set and a notice sent to your home address.

5. ADMISSION OF CHARGE. You may admit the charge by mailing to the court (within the time allowed for your appearance) this copy of the citation together with your personal check or money order for the amount of the fixed penalty and costs. You may also pay over the Internet by going to <http://courtpay.idaho.gov>. Payment of the fixed penalty and costs by mail or via the Internet will cause a judgment to be entered against you for the infraction for which driver violation points may be assessed against you by the Department of Transportation OR you may go before the clerk of the court, within the time allowed for your appearance, to enter your admission at which time you must pay the same fixed penalty and costs.

FIXED PENALTY AND COSTS

VIOLATION #1 **\$131.50**

VIOLATION #2 **\$**

VIOLATION #3 **\$**

VIOLATION #4 **\$**

Total Penalty and costs **\$131.50**

☐ I ADMIT TO VIOLATION ☐ #1 ☐ #2 ☐ #3 ☐ #4
and enclose my check for the full penalty and costs.

MAIL TO: **NEZ PERCE COUNTY MAGISTRATE COURT**
PO BOX 896
LEWISTON, ID 83501

☒ This is an infraction for failure to have insurance. If you admit the charge or are found to have committed the charge, your driver's license will be suspended until you pay the fixed penalty, provide proof of insurance to the Driver's Services Bureau of the Department of Transportation and pay a reinstatement fee.

Departmental Report #L14000346

Prosecuting Attorney
Nez Perce County, Idaho
Post Office Box 1267
Lewiston, Idaho 83501
Telephone (208) 799-3073

FILED

2014 APR 24 PM 12 12

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Reynolds
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

THE STATE OF IDAHO,) CASE NO. **CR14-03285**
Plaintiff,) UNIFORM CITATION NO. ISP0283513
vs.) AFFIDAVIT OF Sergeant Ken Yount
Brian E. NEAL) SUPPORTING INITIAL DETERMINATION
DOB: 07/27/1980) OF PROBABLE CAUSE PURSUANT TO
I.C.R. 5(c)

Defendant.

STATE OF IDAHO)
: ss.
County of Nez Perce)

Your affiant, the undersigned police officer, being duly sworn, deposes and says
under oath as follows:

1. Your affiant is a duly qualified peace officer serving with the Idaho State
Police.
2. There is probable cause to believe that the crime(s) of:
 1. Possession of drug paraphernalia Idaho Code: 37-2734A(1)
 2. Possession of a hydrocodone (Sch. III) Idaho Code: 37-2732(c)(3)

Departmental Report #L14000346

have been committed and that the above named defendant has committed them. The defendant has been arrested, and your Affiant asks that the Court determine whether probable cause exists.

The facts upon which Affiant relies in believing there is probable cause for said stop and/or arrest are as set out in the following narrative and any reports and documents attached hereto and made part hereof. I verify that I have read any attached reports or documents and their contents, along with the following narrative, are true and correct to the best of my information and belief.

1. On April 24, 2014, approximately 0041 hours, I, Sergeant Ken Yount, stopped a black 2005 Pontiac Bonneville (Washington registration ANW0187) in the parking lot of Jack In The Box, located at 1903 G Street in Lewiston, Nez Perce County, Idaho. The vehicle failed to signal when merging onto westbound US Highway 12 from State Highway 128 (near the intersection of 3rd Avenue North), in violation of Idaho Code 49-808(1). The vehicle failed to display a continuous signal (was approximately one second) prior to changing lanes while traveling westbound on US Highway 12 near milepost 1.5, in violation of Idaho Code 49-808(2). I had previously observed the vehicle parked at the Dyna-Mart service station, located at 1920 Highway 128, in a lighted area next to the fuel pumps. I observed the windows appeared to be tinted darker than legal, in violation of Idaho Code 49-944.

2. I contacted the male driver and sole occupant on the driver's side. The driver identified himself with his Washington driver's license as Brian E. NEAL (REDACTED). I immediately observed that NEAL's entire face was wet and appeared to be covered with perspiration. The temperature was approximately 45 degrees and it was raining lightly. NEAL was wearing a sweatshirt, pants and a baseball cap. I also observed that NEAL appeared tense and his left leg was continuously bouncing. I attributed these observations to extreme anxiety, based on my training and experience.

3. NEAL said he thought he "did right" when changing lanes and explained the windows were tinted when he purchased the vehicle. He said the tint had never been measured before but he believed the windows were 35% because the prior owner was a cop. I observed NEAL was the registered owner of the vehicle and he provided an expired proof of liability insurance.

4. NEAL avoided eye contact with me and spoke very quickly. He said he lived in Pasco, Washington and was in town to visit his son. As we conversed, NEAL's anxiety

remained and his left leg continued to tremble. He appeared to have difficulty sitting still. NEAL said he had just left the gas station in North Lewiston.

5. I asked NEAL if he was sweating and he said yes because he was wearing a coat. I confirmed he had just left the gas station and he said he was inside. NEAL's head and face continued to perspire and I asked why he was so anxious. NEAL said it was because he got pulled over.

6. I asked NEAL if all the property in the vehicle belonged to him and he immediately looked away, stammered and said, "Everything." I asked about weapons and firearms and he quickly stated, "Absolutely not." I asked if there was anything illegal in the vehicle and he again said, "Absolutely not." I observed NEAL's t-shirt depicted a marijuana leaf behind the Space Needle (Seattle). I asked NEAL if he promoted marijuana and he said no, but thought it should not be illegal. NEAL said he didn't partake in it (marijuana) but didn't care either way. NEAL's anxiety had not diminished and I asked if there was any marijuana in the vehicle; he said, "Absolutely not."

7. I commented that he still appeared to be perspiring from his face and NEAL said he still felt hot and removed his hat. I commented that the weather was pretty cool and NEAL agreed. I confirmed there was nothing illegal in the car that caused his anxiety. NEAL said he suffered from anxiety and used medications, such as Xanax or Klonopin for the condition. NEAL said he last took his medication three days ago. NEAL said he had been in the Lewiston area for four or five days to visit his son and other friends. I asked NEAL why he was out so late if he was visiting his son. NEAL said he was just "mobbing around" and came to get something to eat. NEAL said he was previously with a friend and planned to go out to the Casino.

8. Based on my training, experience and observations of NEAL's behavior, I suspected he was involved in major criminal activity. I also suspected he was possibly impaired by drugs, such as the Central Nervous System Stimulant methamphetamine (meth), based on my previous training and experience as a Drug Recognition Expert (DRE). Based on my previous assignment as an ISP Detective, I had knowledge that the Tri-Cities area (Kennewick, Pasco, Richland Washington) was a source location for drugs that are often distributed locally.

9. I asked NEAL if he would allow me to search his vehicle when we finished but he declined. I told NEAL that his behavior caused me to suspect he possessed contraband. I asked if there was any reason a narcotics canine would alert to the vehicle; he said no. I told NEAL I was going to request a canine respond and asked if he possessed any drug paraphernalia; he said no. I observed NEAL's breathing became more rapid and he perspired profusely from his face, which I attributed to his increased anxiety. I asked NEAL about his breathing and perspiration; he said it was because I was giving him "the third degree." I said I was asking him simple questions. NEAL replied, "I know, I apologize." I pointed out that he couldn't keep his leg still and NEAL said he wasn't

Departmental Report #L14000346

doing anything illegal and just felt nervous when cops pull him over. I requested NEAL exit the vehicle due to his behavior.

10. Approximately 0047 hours, I requested Idaho State Police (ISP) Trooper (Tpr.) Dave Wesche respond to assist. I also requested ISP Dispatch request the Lewiston Police Department (LPD) call out their drug-detection canine unit, which was not currently on duty. I requested Dispatch check NEAL's criminal history for prior drug offenses and check his driver's status.

11. I confirmed NEAL hadn't taken his prescribed medication for anxiety. I asked if he used any other medications or controlled substances and he said no. NEAL had removed his sweatshirt and I observed multiple scabs on his forearms. I suspected the scabs were prior injection sites from using hypodermic needles to inject drugs, such as methamphetamine (meth). NEAL said it was common to perspire due to his anxiety condition and he was hot from wearing a sweater. He said his condition caused him to sweat, have panic attacks, talk fast and get nervous. NEAL said he also saw a psychiatrist. I observed NEAL wipe the perspiration off his face and he said it felt good in the cool weather.

12. Approximately 0052 hours, Tpr. Wesche arrived to assist. I briefly explained to Tpr. Wesche my observations of NEAL and requested he stand with him. I began to complete a citation for the insurance violation. LPD Officer (Ofc.) Chris Reese, who is a drug-detection canine handler, called me to inquire about my request for his response. I briefly explained my observations to Ofc. Reese and suspicion that NEAL might be impaired by drugs. Dispatch advised NEAL returned current and clear through Washington and had prior felony drug offenses on his criminal record. Dispatch advised NEAL was on probation and I requested a check to verify he was authorized to travel to Idaho.

13. I contacted NEAL and obtained his current address in Pasco, Washington. I asked NEAL if he was on probation and he said no. NEAL said he was released from probation about two months ago. NEAL said he had served time in prison in Washington for bank robbery. I asked NEAL if he had ever been arrested for drug offenses and he replied, "Um, no. Uh, yeah, I have; for marijuana back in 2004." I asked NEAL about his probation officer and he wasn't sure of his name.

14. Dispatch confirmed NEAL was on active probation and his probation officer on record was Charles Dorendorf in Pasco. Dispatch was unable to contact the probation officer or research restrictions because it was after hours. Dispatch advised of a misdemeanor warrant for NEAL's arrest issued by Tacoma Police; the warrant was non-extraditable.

15. I completed the insurance citation and prepared my tint meter to measure the window tint. During this time, approximately 0107 hours, Ofc. Reese arrived with his canine. I updated Ofc. Reese about the circumstances of the contact and requested he deploy his

canine on the vehicle. Ofc. Reese spoke with NEAL while I measured the window tint. The right front side window measured 17%; legal is 35%. The right rear side window measured 16%; legal is 35%. The rear window measured 26%; legal is 35%. Idaho Code allows for 3% tolerance, plus or minus.

16. Approximately 0111 hours, Ofc. Reese deployed his canine around the outside of the vehicle. A short time later, Ofc. Reese advised his canine alerted to drug odor coming from the vehicle. Ofc. Reese explained the alert to NEAL, who denied there were any drugs in the vehicle. He commented there might be drug odor in the vehicle because of the prior owner, but he had owned the car for approximately six months.

17. Approximately 0116 hours, Ofc. Reese and I searched the vehicle. I entered on the passenger side and Ofc. Reese entered on the driver's side. I located a cell phone in the center cup holder. I opened the center console and observed a second, identical cell phone. There was also a digital scale in the center console. I observe the residue of a white crystalline substance on the scale that, based on my training and experience, appeared consistent with meth residue. There were other miscellaneous personal items inside the center console. Ofc. Reese located a silver metal measuring cup that contained a black residue in the lower pocket of the driver's door. There were three used syringes inside a plastic toothbrush container that was located on the floor in front of the driver's seat. There was a black backpack inside the trunk. I located a new syringe sealed inside plastic packaging in the backpack. There was another used syringe inside the backpack. There was a laptop computer and notebook inside the backpack that NEAL later claimed as his property.

18. The notebook contained school-related notes on the first few pages. The rest of the pages were blank, save for the final page. There was a list of letters and names with numbers listed next to them (Ben- 140.00; Mat- 90.00, 470) on the last page. Some of the numbers listed were crossed out with other numbers listed next to them (R- 75.00 [crossed out], then 225). Based on my training and experience, I suspected the notes were a pay/owe sheet to track clients and money owed from drug distribution.

19. In the front passenger area I had located a smaller notepad from the Red Lion Hotel with similar notes written on it. There were multiple letters listed with three digit numbers (example: 590) written next to them. Again, some of the numbers had been crossed out with new three digit numbers listed next to them (G- 200 [crossed out], then 400). These notes were also consistent with a pay/owe sheet. NEAL later admitted the notebook belonged to him and contained notes from school and a "fantasy football league."

20. I asked NEAL when he last used meth. NEAL replied, "Methamphetamine? Um, years." I asked why there were multiple used needles in the car and NEAL said, "Um, my Aunt's a diabetic, maybe." I told NEAL the needles weren't for diabetes and he said,

"Um, yeah, I don't use meth. I don't do weed." NEAL said he was recently released from probation and didn't have any dirty urine analyses.

21. I requested NEAL perform the Standardized Fields Sobriety Evaluations (SFSE's), to determine if he was impaired. The evaluations included checking for a lack of convergence (eyes) and the Modified Romberg evaluation. During the Walk and Turn evaluation, I observed NEAL walked with straight legs that appeared very stiff. His movements were very deliberate compared to the manner in which he previously walked about the scene. I suspected NEAL's movements were the result of his efforts to conceal contraband on his person. Based on my training and experience, NEAL exhibited signs and symptoms consistent with drug use; however, I determined he was not impaired. I seized all items of contraband except for the syringes, which I displayed in front of my patrol camera and then discarded in the vehicle.

22. I again asked NEAL if he had used the syringes to inject drugs into his body and he said no. I requested he expose his arms as he had put on a sweatshirt for warmth. I observed multiple scabs and marks on both of NEAL's arms. NEAL denied the marks were from injection sites and said he had been bitten by a dog. I asked NEAL about the scale with crystalline residue that I believed to be meth. NEAL said he didn't know about the scale. NEAL said he owned two black flip-style cell phones that were in the car. I told him one of the phones was inside the center console next to the scale with residue, which indicated he had knowledge of the scale. NEAL said, "I knew that the phone was in there (center console)."

23. Approximately 0153 hours, I arrested NEAL for possession of drug paraphernalia. I asked NEAL if he had any contraband on his person and he said no. I observed a bulge in the crotch area of his pants but was unable to discern if it was contraband or his anatomy. I found a small piece of cotton inside NEAL's vest pocket. I commented that cotton is often used with needles to inject drugs and asked NEAL if he had injected meth at the gas station; he said no. I found a cotton swab in NEAL's left front pant pocket. I told NEAL that he would be searched more thoroughly at the jail, including a full body search. I cautioned NEAL that he could face additional charges if he transported contraband into the jail. NEAL continued to deny that he possessed any contraband. I secured NEAL in the back seat of my patrol car.

24. A large amount of cash was found in NEAL's wallet and he estimated the total was approximately \$1,800. The actual amount was \$1,677. There were thirteen \$100 bills, four \$50 bills, eight \$20 bills, one \$10 bill, one \$5 bill and two \$1 bills. NEAL said the cash included \$1,200 he won recently at the Clearwater River Casino. I found a receipt dated April 16, 2014 that indicated NEAL won \$1,200 at the casino. NEAL later explained he was in Lewiston last week to visit his son when he won the cash. He said he returned to Pasco for work and school and then returned this week to visit his son again.

25. Approximately 0202 hours, I advised NEAL of his Miranda Rights, which I read from a card. NEAL said he understood. Tpr. Wesche completed an inventory of the vehicle and Bernard's Towing removed it for safekeeping. NEAL asked if he could be released with a citation for possession of drug paraphernalia; I told him no because he had been arrested for that offense.

26. I transported NEAL to the Nez Perce County Detention Center in Lewiston. During transport, NEAL asked about his court appearance or if he could post bond. NEAL said he tried to cooperate with me and told me there was nothing in his car. I replied that there was drug paraphernalia in the car and NEAL said he meant nothing serious. I asked why he wasn't honest with me about the scale and he replied, "I didn't even think of that." I told NEAL I would have appreciated him telling me about the needles to avoid getting stuck by one. NEAL said he wasn't even thinking about that and apologized. NEAL said, "I'm thinking about guns and serious shit man." I asked NEAL when he last "shot up" (used meth) and he said it was a while ago, the other day. NEAL again said it had been a while since he used and that was probably why he was sweating so badly. I asked NEAL why he had four syringes in his car and he said they were from four different uses because he tried to be clean with needles. I asked NEAL where he injected and he said in his muscles and different locations on his body. NEAL said he attended school part time and worked in receiving at a business in Burbank, Washington. I asked if he was using four or five times a week and NEAL said yes, or about that many times every couple weeks. I asked if he used about one gram of meth a week and he replied, "Yeah, it depends. That shit's cheap over in the Tri-Cities." I commented that most people that use meth sell a little on the side so they can support their habit for free. NEAL replied, "Yeah, I see what you're saying." I asked about the notebooks and NEAL denied the notes were to keep track of drug sales. I asked why he had a scale and NEAL said, "If you get something for yourself you want to make sure that they're not ripping you off, you know?" NEAL again said meth is cheap in the Tri-Cities but expensive in Lewiston and that's why he won't deal with people here. I asked how much meth he brought over with him and he said, "I didn't bring shit over with me, that's my problem." I commented that he had enough cash to purchase drugs and NEAL said he didn't have a bank account and had bills to pay. I released NEAL to the custody of jail staff for booking. I requested a full strip search of NEAL based on the circumstances of my investigation.

27. Approximately 0300 hours, Nez Perce County Sheriff's Deputy (Dep.) Brian Bonds conducted the strip search of NEAL. Dep. Bonds returned to the booking area moments later with a black tube sock that contained a round object about the size of a baseball. Dep. Bonds said he found the sock when NEAL handed his underwear to him during the search. Dep. Bonds emptied the contents of the sock onto the floor in the booking area. I observed a black substance inside a plastic baggy that was tied closed. Based on my training and experience, the substance appeared consistent with heroin. I estimated the weight of the heroin to be about one quarter ounce (7 grams). There was a white crystalline substance inside another plastic baggy that was tied closed. Based on my

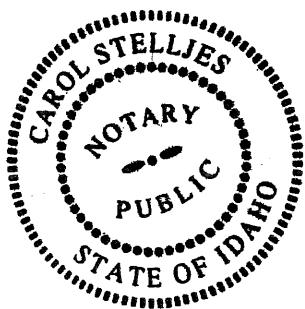
Departmental Report #L14000346

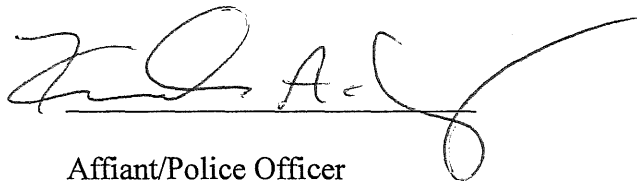
training and experience, the substance appeared consistent with meth. I estimated the weight of the meth to be about one half ounce (14 grams). There was a small plastic baggy containing four yellow oval pills that were later identified as hydrocodone, a Schedule III controlled substance. I seized the contraband as evidence. I also seized the notebook, notepad and two cell phones as evidence of drug trafficking. I seized the cash (\$1,677) as evidence and suspected proceeds of drug trafficking/distribution.

28. I went to the ISP District 2 Office in Lewiston to process the evidence. I used an NIK field testing kit to test a sample of the white crystalline substance; it tested presumptively positive for meth. The meth weighed 11.0 grams. I used an NIK field testing kit to test a sample of the suspected heroin; the results were inconclusive. However, the black tar-like substance smelled strongly of vinegar and was of the consistency that, based on my training and experience, was consistent with heroin. ISP Detectives informed me that on multiple occasions, heroin from controlled purchases failed to field test positive but was later confirmed as heroin by the ISP Forensic Lab. The suspected heroin weighed 6.8 grams.

29. I subsequently completed the necessary paperwork to charge NEAL with possession of drug paraphernalia, in violation of Idaho Code 37-2734A(1), possession of a Schedule III controlled substance (hydrocodone), in violation of Idaho Code 37-2732(c)(3), possession of meth with intent to deliver, in violation of Idaho Code 37-2732(a)(1)(A), trafficking heroin (2-7 grams), in violation of Idaho Code 37-2732b(6)(A), and three (3) counts of introduction of major contraband into a correctional facility, in violation of Idaho Code 18-2510(3)(a); each controlled substance (hydrocodone, meth, heroin) constituted one count each.

AFFIDAVIT SUPPORTING INITIAL
DETERMINATION OF PROBABLE CAUSE
PURSUANT TO I.C.R. 5 (C)

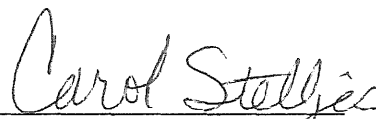



A handwritten signature in black ink, appearing to read "Z. Q. A. C.", written over a horizontal line.

Affiant/Police Officer

SUBSCRIBED AND SWORN to/before me this 24 day of

April, 2014


A handwritten signature in black ink, appearing to read "Carol Stelljes", written over a horizontal line.
Notary Public, State of Idaho
Residing at Lewiston, Id therein
Commission expires: Apr. 10, 2019

8IP0140281524-APR-2014 00:42:05ILETS Reply

04/24/2014 01:42

IP0140 Message Received From NLETS

RR.WADOL0000

00:42 04/24/2014 02154

00:42 04/24/2014 00603 IDISP0320

*MRI4707148

TXT

L..IDISP0320.LIC/ANW0187

VIN/1G2HZ54Y75U102339

.VYR/2005.VMA/PONT .VMO/BON4D

EXP DATE/10-06-2014

NEAL,BRIAN ELLIS

531 S 38TH AVE APT J229

WEST RICHLAND,WA,99353

JBC MOTORS LLC

1716 W LEWIS ST

PASCO,WA,99301

TITLE/ 10-07-2013 1328011203

MRI 4707151 IN: NLI1 1346 AT 2014-04-24 01:41:49

OUT: ISPC 755 AT 2014-04-24 01:41:49

PIC NAME1 NEAL*BE206M7

TAB# IS B090511 14

PREV TAB NOT AVAILABLE

PLATE ISSUE DATE/ 10-2013

8IP0140281524-APR-2014 00:42:19ILETS Reply

04/24/2014 01:38

IP0140 Message Received From NLETS

WASHINGTON DEPARTMENT OF MOTOR VEHICLES

DR..IDISP0320.OLN/HARPEBD201OT

[REDACTED] 000-00-0000

04-24-14

RESTRICTIONS:

HARPER, BRIAN D

[REDACTED] MALE

R/8411 182ND AVE E

EYE/BLU;HGT/6-00;WGT/195

R/BONNEY LAKE

WA 98390-5535

PDL:ISS/11-18-03 EXP/09-30-08 DUI/PC 000 VH 000 CDL:STATUS: NONE

STATUS: CLEAR RD/DUI 000 VA 000

DWLS/R 1ST:000 DWLS/R 2ND:000 DWLS/R 3RD:000

NOTE: COMPLETE RECORD UNDER NEAL*BE206M7

DONOR: Y

MRI 4706988 IN: NLI1 1319 AT 2014-04-24 01:38:24

OUT: ISPC 738 AT 2014-04-24 01:38:24

8IP0140281524-APR-2014 00:42:43ILETS Reply

04/24/2014 01:33

IP0140 Message Received From NLETS

WASHINGTON DEPARTMENT OF MOTOR VEHICLES

DR.:IDISP0320.OLN/NEAL*BE206M7

NEAL, BRIAN ELLIS

R/531 S 38TH AVE APT J229

R/WEST RICHLAND

WA 99353-5172

04-24-14

RESTRICTIONS:

MALE

EYE/BLU;HGT/6-00;WGT/200

PDL:ISS/08-22-13 EXP/07-27-18 DUI/PC 000 VH 000 CDL:STATUS: NONE

STATUS: CLEAR RD/DUI 000 VA 000

DWLS/R 1ST:000 DWLS/R 2ND:000 DWLS/R 3RD:000

DONOR: Y

SEE COMPLETE RECORD FOR ALIAS'S

MRI 4706776 IN: NLI1 1268 AT 2014-04-24 01:33:11

OUT: ISPC 709 AT 2014-04-24 01:33:11

8IP0140281524-APR-2014 00:42:55ILETS Reply

04/24/2014 01:34

IP0140 Message Received From NLETS

KR.WADOL0000

00:34 04/24/2014 01812

00:34 04/24/2014 00546 IDISP0320

*MRI4706845

TXT

K ..IDISP0320.OLN/NEAL*BE206M7

04-24-14 ** ABSTRACT OF COMPLETE DRIVING RECORD 00:34

THE FOLLOWING IS A TRUE AND CORRECT COPY OF THE INFORMATION MAINTAINED
BY THE DEPARTMENT OF LICENSING AT OLYMPIA WASHINGTON. INSURANCE COMPANIES
ARE LIMITED TO A 3 YR RECORD. EMPLOYERS ARE ENTITLED TO A FULL RECORD.

LIC# NEAL*-BE-206M7

STATUS: PDL RELEASED

NEAL, BRIAN ELLIS

R/531 S 38TH AVE APT J229

SEX M EYES BLU

LICENSE ISSUED

08-22-13

R/WEST RICHLAND

WA 99353

HGT 6'00" WGT 200

LICENSE EXPIRES

07-27-18

NOTE: ALL KNOWN AKA'S: HARPEBD201OT

NOTE: 000000 000000 000000 000000 000000 000000 0000

* NO VIOLATION CONVICTIONS OR ACCIDENTS WITHIN THE PAST FIVE YEARS

110208 SUSP DS CHLD SUP ENF 110218 1016080000

073013 REL DS CHLD SUP ENF 110218 0730130000

030809 SUSP FT FTA/UNPAID TKT 012019 8Y6024098

052509 SUSP FT FTA/UNPAID TKT 040819 8Y6024099

080213 COMP FT FTA/UNPAID TKT 012019 8Y6024098

080213 REL FT FTA/UNPAID TKT 040819 8Y6024099

MRI 4706851 IN: NLI1 1289 AT 2014-04-24 01:34:29

OUT: ISPC 723 AT 2014-04-24 01:34:29

8IP0140281524-APR-2014 00:55:17ILETS Reply

04/24/2014 01:54

IP0140 Message Received From NLETS

FR.WAWSP0000

00:54 04/24/2014 00240

00:54 04/24/2014 00807 IDISP0320

*MRI4707870

TXT

FR.WAWSP0000.IDISP0320..

PUR/C.ATN/SGT YOUNT AR CH37.SID/WA19352462

PAGE 1

FQ.IDISP0320.00:5404/24/20140027900:5404/24/201400693WA *MRI4707870TXTPUR/C.

ATN/SGT YOUNT AR CH37.SID/WA19352462

ATN/SGT YOUNT AR CH37

WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA19352462

WASHINGTON STATE PATROL

IDENTIFICATION AND CRIMINAL HISTORY SECTION

P.O. BOX 42633

OLYMPIA, WASHINGTON 98504-2633

CRIMINAL HISTORY INFORMATION AS OF 04/24/2014

NOTICE

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COMMUNICATE DIRECTLY WITH THE AGENCY THAT SUPPLIED THE INFORMATION TO THE
WASHINGTON STATE PATROL.

MASTER INFORMATION

NAME: NEAL, BRIAN ELLIS

SID NUMBER: WA19352462

DOC NUMBER: 324024

FBI NUMBER: 859071JB5

PERSON INFORMATION

SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	PLACE OF BIRTH	CITIZENSHIP
M	W	600	185	BLU	BRO	WA	
						US	
						XX	

OTHER NAMES USED

OTHER DATES OF
BIRTH USEDSEC
NUMBER

MISC NUMBER

DNA TAKEN: Y DNA TYPED: Y

DLO: WSP CRIME LABORATORY-SEATTLE, CODIS UNIT (206) 262-6020, STR,110-026131

 SCARS, MARKS, TATTOOS, AMPUTATIONS

LOCATION	DESCRIPTION	LOCATION	DESCRIPTION
SC L SHLD		SC UR ARM	
TAT ABDOM	LETTERS	TAT CHEST	LETTERS
TAT L HND	LETTERS	TAT L SHLD	BODY
TAT L SHLD	FLOWERS	TAT NECK	LETTERS
TAT NECK	SHAPES	TAT R HND	SHAPES
TAT UR ARM	FLOWERS		

 CONVICTION AND/OR ADVERSE FINDING SUMMARY

	DISPOSITION	DATE
3 FELONY(S)		
ROBBERY-1	CLASS A FELONY	08/25/2010
CONT SUB-POSS NO PRESCRIPTION	CLASS C FELONY	10/14/2008
0 GROSS MISDEMEANOR(S)		
1 MISDEMEANOR(S)		
VUCSA-POSS MARIJ 40 GRAMS OR LESS		01/14/1999
0 CLASSIFICATION(S) UNKNOWN		

 DOC SUMMARY

	DISPOSITION	DATE
ROBBERY-1	COMMITMENT	09/10/2010

 CRIMINAL HISTORY INFORMATION

THE ARRESTS LISTED MAY HAVE BEEN BASED ON PROBABLE CAUSE AT THE TIME OF ARREST OR ON A WARRANT. PROBABLE CAUSE ARRESTS MAY OR MAY NOT RESULT IN THE FILING OF CHARGES. CONTACT THE ARRESTING AGENCY FOR INFORMATION ON THE FORMAL CHARGES AND/OR DISPOSITIONS.

ARREST 3 DATE OF ARREST: 07/01/2010

NAME USED:	NEAL, BRIAN ELLIS
CONTRIBUTING AGENCY:	WASPD0000 SEATTLE POLICE DEPARTMENT
LOCAL ID:	A648270 PCN: 207894257 TCN: WA1700000200939957

ARREST OFFENSES	DISPOSITION
0290000 ROBBERY	CONTRIBUTOR OR RESPONSIBLE AGENCY:
RCW: 9A.56.200-210	WA017015J KING COUNTY SUPERIOR
FELONY	COURT
ORIGINATING AGENCY: WASPD0000	COURT CASE NO: 10100060606
SEATTLE POLICE DEPARTMENT	
OIN: 100206654	STATUS: GUILTY
DISPO RESPONSIBILITY: WA017015J	0291200 ROBBERY-1
COURT CASE NO: 101060606	RCW: 9A.56.200 (2)
DATE OF OFFENSE: 07/01/2010	CLASS A FELONY
COMMENT: INV/2 COUNTS	STATUS DATE: 08/25/2010
	COUNTS: 2
	COMMENT: W/IN FINANCIAL INST

SENTENCE: SENT. DESC.:
51M DOC CTS 1&2 CONC. 18M
COMM CUSTODY.

ARREST 2

DATE OF ARREST: 08/14/2008

NAME USED: NEAL, BRIAN ELLIS
CONTRIBUTING AGENCY: WA0270000 PIERCE COUNTY SHERIFFS OFFICE
LOCAL ID: 304944 PCN: 539542133 TCN: WA2700000101013826

ARREST OFFENSES	DISPOSITION
0733100 CONT SUB-MFG/DEL/POSS W/INT RCW: 69.50.401(2) FELONY ORIGINATING AGENCY: WA0270000 PIERCE COUNTY SHERIFFS OFFICE DISPO RESPONSIBILITY: WA027015J DATE OF OFFENSE: 08/14/2008	CONTRIBUTOR OR RESPONSIBLE AGENCY: WA0270000 PIERCE COUNTY SHERIFFS OFFICE STATUS: DISPOSITION NOT RECEIVED CONTRIBUTOR OR RESPONSIBLE AGENCY: WA027015J PIERCE COUNTY SUPERIOR COURT COURT CASE NO: 081037829
0113400 ASSAULT-4 RCW: 9A.36.041(2) GROSS MISDEMEANOR ORIGINATING AGENCY: WA0270000 PIERCE COUNTY SHERIFFS OFFICE DISPO RESPONSIBILITY: WA0270000 DATE OF OFFENSE: 08/14/2008	STATUS: GUILTY 0736110 CONT SUB-POSS NO PRESCRIPTI ON RCW: 69.50.4013(2) CLASS C FELONY STATUS DATE: 10/14/2008
0761300 FAIL COMPLY POL/FLAGMAN/FIRE FGHT RCW: 46.61.015(2) MISDEMEANOR ORIGINATING AGENCY: WA0270000 PIERCE COUNTY SHERIFFS OFFICE DISPO RESPONSIBILITY: WA0270000 DATE OF OFFENSE: 08/14/2008	COMMENT: OXYCODONE SENTENCE: SENT. DESC.: CHG 01: JAIL-31 DS, SUPV- 12 MOS

ARREST 1

DATE OF ARREST: 12/05/1998

NAME USED: NEAL, BRIAN ELLIS
CONTRIBUTING AGENCY: WA0120000 GARFIELD COUNTY SHERIFF
LOCAL ID: 9825272 PCN: 004250729 TCN: N/A

ARREST OFFENSES	DISPOSITION
07369 VUCSA-POSS MARIJ 40 GRAMS OR LESS RCW: 69.50.401(E) MISDEMEANOR ORIGINATING AGENCY: WA0120000 GARFIELD COUNTY SHERIFF OIN: 9825272 DISPO RESPONSIBILITY: WA012013J DATE OF OFFENSE: 12/05/1998	CONTRIBUTOR OR RESPONSIBLE AGENCY: WA012013J GARFIELD COUNTY DISTRICT COURT COURT CASE NO: C0057723A STATUS: GUILTY 07369 VUCSA-POSS MARIJ 40 GRAMS OR LESS RCW: 69.50.401(E) MISDEMEANOR STATUS DATE: 01/14/1999
07389 DRUG PARAPHERNALIA RCW: 69.50.412 MISDEMEANOR ORIGINATING AGENCY: WA0120000 GARFIELD COUNTY SHERIFF OIN: 9825272B	SENTENCE: SENT. DESC.: CHG 01: FINE-1140.00, JAIL-

DISPO RESPONSIBILITY: WA012013J
DATE OF OFFENSE: 12/05/1998

90 DS/SUSPENDED 75 DS

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA012013J GARFIELD COUNTY
DISTRICT COURT
COURT CASE NO: C0057723B

STATUS: DISMISSED
07389 DRUG PARAPHERNALIA
RCW: 69.50.412
MISDEMEANOR
STATUS DATE: 01/14/1999

STATE DEPARTMENT OF CORRECTIONS

CUSTODY HISTORY

END OF PAGE 1 - PAGE 2 TO FOLLOW

* * * END OF RECORD * * *

MRI 4707874 IN: NLI1 1549 AT 2014-04-24 01:54:00

OUT: ISPC 906 AT 2014-04-24 01:54:00

8IP0140281524-APR-2014 00:55:23ILETS Reply

04/24/2014 01:54

IP0140 Message Received From NLETS

FR.WAWSP0000

00:54 04/24/2014 00241

00:54 04/24/2014 00808 IDISP0320

*MRI4707870

TXT

FR.WAWSP0000.IDISP0320..

PUR/C.ATN/SGT YOUNT AR CH37.SID/WA19352462

PAGE 2

FQ.IDISP0320.00:5404/24/20140027900:5404/24/201400693WA *MRI4707870TXTPUR/C.

ATN/SGT YOUNT AR CH37.SID/WA19352462

ATN/SGT YOUNT AR CH37

WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA19352462

COMMITMENT

DATE: 09/10/2010

NAME USED:

NEAL, BRIAN ELLIS

DOC NUMBER: 324024

CONTRIBUTING AGENCY: WA023025C WA DOC-SHELTON CORRECTIONS

COURT CASE NO: 101060606 COUNTY/STATE: KING

CHARGE: 0291200 ROBBERY-1 CLASS A FELONY

9A.56.200(2)

DOO: 06/18/2010

OFFENSE COMMENTS: CT I, II

CDD: 09/10/2010

CPL: 51 MOS CT I, II CC

CUSTODY STATUS INFORMATION

NAME: NEAL, BRIAN ELLIS

DATE: 12/30/2013

DOC NUMBER: 324024

CUSTODY STATUS: ACTIVE

LOCATION: PASCO OFFICE

RISK LEVEL CLASSIFICATION: HIGH VIOLENT

VIOLENT OFFENDER

(NON-VERIFIED CUSTODY STATUS INFORMATION-PROVIDED BY DEPARTMENT OF CORRECTIONS)

NO KNOWN SEX/KIDNAPPING OFFENDER REGISTRATIONS

NO KNOWN APPLICANT DETAILS

GLOSSARY OF TERMS IS AVAILABLE IN THE CRIMINAL JUSTICE TRAINING MANUAL (CJTM)
LOCATED AT <http://www.wsp.wa.gov/crime/crimhist.htm>

RESOURCES

ADMINISTRATIVE OFFICE OF THE COURTS (AOC)-----WWW.COURTS.WA.GOV
WSP CHRU -----CRIMHIS@WSP.WA.GOV OR

(360) 534-2000
DEPARTMENT OF CORRECTIONS (DOC)-----WWW.DOC.WA.GOV
WSP SOR UNIT----- (360) 534-2000
WSP CRIME LAB CODIS----- (206) 262-6020
RCW-----HTTP://APPS.LEG.WA.GOV/RCW/
LEGISLATION-----HTTP://APPS.LEG.WA.GOV
END OF RECORD
* * * END OF RECORD * * *
MRI 4707875 IN: NLI1 1550 AT 2014-04-24 01:54:00
OUT: ISPC 907 AT 2014-04-24 01:54:00

8IP0140281524-APR-2014 00:55:30ILETS Reply

04/24/2014 01:54

IP0140 Message Received From NLETS

CR.WVFBINF00

00:54 04/24/2014 00572

00:54 04/24/2014 00811 IDISP0320

TXT

HDR/2L0100CF,MRI4707900

ATN/SGT YOUNT TS CH37

***** CRIMINAL HISTORY RECORD *****

Data As Of 2014-04-24

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number 859071JB5

Request Id

Purpose Code C

Attention SGT YOUNT TS CH37

The information in this rap sheet is subject to the following caveats:

This record is based only on the FBI number in your request-859071JB5.

Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. (US; 2014-04-24)

All arrest entries contained in this FBI record are based on fingerprint comparisons and pertain to the same individual. (US; 2014-04-24)

The use of this record is regulated by law. It is provided for official use only and may be used only for the purpose requested. (US; 2014-04-24)

***** IDENTIFICATION *****

Subject Name(s)

NEAL, BRIAN ELLIS

NEAL, BRIAN ELLIS (AKA)

NEAL, BRIAN E (AKA)

Subject Description

FBI Number State Id Number

859071JB5 WA19352462 (WA)

Security Number

Sex

Race

Male

White

Height

Weight

6'00"

140

Hair Color

Eye Color

Brown

Blue

Fingerprint Pattern

18636005131963541609 (FPC)

18636005131963541609 (FPC)

Scars, Marks, and Tattoos

Code Description, Comments, and Images

TAT R HND , TATTOO ON RIGHT HAND

SC UR ARM , SCAR ON UPPER RIGHT ARM

TAT UR ARM , TATTOO ON UPPER RIGHT ARM

TAT L HND , TATTOO ON LEFT HAND

SC L SHLD , SCAR ON LEFT SHOULDER

TAT L SHLD , TATTOO ON LEFT SHOULDER

TAT ABDOM , TATTOO ON ABDOMEN

TAT CHEST , TATTOO ON CHEST

TAT NECK , TATTOO ON NECK

Place of Birth Citizenship

WA US
Fingerprint Images
Photo Images
Photo Image Available FBI-CJIS DIV-CLRKSBG CLARKSBURG WVFBINF00
Available Image Other
(No Photo Image Transmitted
Comment:FBI has two photos associated with
arrest date of 2007/11/26)
Photo Image Available FBI-CJIS DIV-CLRKSBG CLARKSBURG WVFBINF00
Available Image Other
(No Photo Image Transmitted
Comment:FBI has two photos associated with
arrest date of 2007/07/12)
Photo Image Available FBI-CJIS DIV-CLRKSBG CLARKSBURG WVFBINF00
Available Image Other
(No Photo Image Transmitted
Comment:FBI has two photos associated with
arrest date of 2006/11/20)
Photo Image Available USM SPOKANE WAUSM0200
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated
with arrest date of 2005/04/22)
Photo Image Available DEA YAKIMA WADEA0400
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated
with arrest date of 2005/04/11)
Photo Image Available FBI-CJIS DIV-CLRKSBG CLARKSBURG WVFBINF00
Available Image Other
(No Photo Image Transmitted
Comment:FBI has one photo associated with
arrest date of 2005/04/08)
***** CRIMINAL HISTORY *****
===== Cycle 001 =====
Earliest Event Date 2005-04-08

Arrest Date 2005-04-08
Arrest Case Number
Arresting Agency WADEA0400 DEA YAKIMA
Charge 01
Charge Literal 3533 - COCAINE
Agency WADEA0400 DEA YAKIMA
Severity

Court Disposition (Cycle 001)
Court Agency Unknown
Charge 01
Charge Literal 3533 - COCAINE
Severity
Disposition (Other ; NOT YET DISPOSED)
===== Cycle 002 =====
Earliest Event Date 2005-04-11

Arrest Date 2005-04-11
Arrest Case Number
Arresting Agency WADEA0400 DEA YAKIMA
Charge 01
Charge Literal POSSESSION & CONSPIRACY
Agency WADEA0400 DEA YAKIMA

Severity

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Court Disposition      (Cycle 002)
Court Agency           Unknown
Charge                01
    Charge Literal     POSSESSION COCAINE
    Severity
    Disposition        (Other ; 1-31-06 PLED GUILTY)
Charge                02
    Charge Literal     POSSESSION (SIMPLE) COCAINE
    Severity
    Disposition        (Other ; 1-31-06 PLED GUILTY, SENTENCED TO 18
                        MONTHS FEDERAL PRISON, 24 MONTHS FEDERAL
                        PROBATION, FINED $100)
===== Cycle 003 =====

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Earliest Event Date    2005-04-22
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Arrest Date            2005-04-22
Arrest Case Number
Arresting Agency       WAUSM0200 USM SPOKANE
Charge                01
    Charge Literal     COCAINE SELL
    Agency             WAUSM0200 USM SPOKANE
    Severity
-----

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Court Disposition      (Cycle 003)
Court Agency           Unknown
Charge                01
    Charge Literal     COCAINE - SELL
    Severity
    Disposition        (Other ; GUILTY PLEA 1-31-06 SENTENCE CAG 18
                        MONTHS, SUP REL 2 YEARS, S/A $100.00)
-----

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Corrections            (Cycle 003)
Corrections Agency     US PROBATION OFFICE SEATTLE
    Date in Custody    2006-07-27
    Correction Action   STATUS--SUPERVISED RELEASE / SUPERVISED RELEASE
                        REVOKED
===== Cycle 004 =====

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Earliest Event Date    2006-11-20
-----

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Arrest Date            2006-11-20
Arrest Case Number
Arresting Agency       WAUSM0100 USM SEATTLE
Charge                01
    Charge Literal     5012 - PROB VIOLATION-
    Agency             WAUSM0100 USM SEATTLE
    Severity
-----

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Court Disposition      (Cycle 004)
Court Agency           Unknown
Charge                01
    Charge Literal     PV-POSS W/INT TO DIST A CONT SUBST
    Severity
    Disposition        (Other ; 12-1-06 30 DAYS IMPRISONMENT, 18
                        MONTHS SUPERVISED RELEASE)
-----

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Corrections            (Cycle 004)
Corrections Agency     US PROBATION OFFICE SEATTLE
    Date in Custody    2006-12-15

```

Correction Action STATUS--SUPERVISED RELEASE
Corrections Agency US PROBATION OFFICE SEATTLE
Date in Custody 2007-08-28
Correction Action STATUS--SUPERVISED RELEASE REVOKED

===== Cycle 005 =====

Earliest Event Date 2007-07-12

Arrest Date 2007-07-12
Arrest Case Number
Arresting Agency WAUSM0100 USM SEATTLE
Charge 01
Charge Literal 5012 - PROB VIOLATION-
Agency WAUSM0100 USM SEATTLE
Severity

Court Disposition (Cycle 005)
Court Agency Unknown
Charge 01
Charge Literal 5012 - PROB VIOLATION-
Severity
Disposition (Other ; NOT YET DISPOSED)

===== Cycle 006 =====

Earliest Event Date 2007-11-26

Arrest Date 2007-11-26
Arrest Case Number
Arresting Agency WAUSM0100 USM SEATTLE
Charge 01
Charge Literal 5012 - PROB VIOLATION-
Agency WAUSM0100 USM SEATTLE
Severity

Court Disposition (Cycle 006)
Court Agency Unknown
Charge 01
Charge Literal 5012 - PROB VIOLATION-
Severity
Disposition (Other ; NOT YET DISPOSED)

***** INDEX OF AGENCIES *****
Agency FBI-CJIS DIV-CLRKSBG CLARKSBURG; WVFBINF00;
Address 1000 CUSTER HOLLOW RD
CLARKSBURG, WV 26306

Agency DEA YAKIMA; WADEA0400;
Address STE 900 402 E YAKIMA AVE
YAKIMA, WA 98901

Agency USM SPOKANE; WAUSM0200;
Address 920 W RIVERSIDE AVE/R 888 PO BOX 1463
SPOKANE, WA 99201

Agency US PROBATION OFFICE SEATTLE; WA017017G;
Address 11101 US COURTHOUSE 700 STEWART ST
SEATTLE, WA 981011271

Agency USM SEATTLE; WAUSM0100;

Address

STE 9000 700 STEWART ST
SEATTLE, WA 981011271

* * * END OF RECORD * * *

MRI 4707905 IN: NLI1 1553 AT 2014-04-24 01:54:28

OUT: ISPC 915 AT 2014-04-24 01:54:28

8IP0140281524-APR-2014 02:16:41

Rotation Request**Response from site 2****SML Recommendation(s) for unit 518:**

Identifier: BERNAR

FullName: BERNARDS TOWING

Phones: (1) *82 743-9504

26195 Central Grade Rd. Lewiston 83501

REPORT TO NEZ PERCE COUNTY SHERIFF
CONCERNING REASON FOR ARREST

☒ STATE OF IDAHO

☐ CITY OF LEWISTON

NEAL, BRIAN E.
Defendant

DOB: [REDACTED]

AGENCY CASE#: L14000346

TIME OF ARREST: 0153 HRS.

DATE OF ARREST: 04/24/14

PLACE: JACK W BOX PLOT

AUTO LOCATION: BERNARD'S TAXI.

The undersigned peace officer presents the above named defendant to the Sheriff of Nez Perce County Idaho for the confinement in said County's Jail for the following offense(s): POSSESS PARAPHERNALIA (37-2734A), POSSESS SCH- III Hydro. (37-2732C3), POSSESS METH W/INTENT TO DELIVER (37-2732(A)(1)(A)), TRAFFICKING HEROIN - 7 TO 28 g. (37-2732B(6)(B)), 3 COUNTS OF INTRO MAJOR CONTRABAND INTO CORRECTION FACILITY - HYDROS, METH, HEROIN (18-25(0)(3)(a))

The above-named defendant was arrested by: SGT. K. YOUNT of the ISP, on the 24TH day of APRIL 2014.

The reason for the arrest is as follows;

☐ In obedience to a warrant.

☒ Said offense was committed or attempted in the presence of SGT. K. YOUNT of the ISP

☐ Said offense is a Felony and the officer making the arrest had probable cause to believe the defendant committed the offense.

☐ Said offense was committed or attempted in the presence of a private citizen whose name is _____ and said citizen made the initial arrest.

☐ Said offense is a Misdemeanor for which an arrest may be made without a warrant (by statute) and without having been committed within the officer's presence since the officer making the arrest had probable cause to believe the defendant committed the offense.

REASON FOR PROBABLE CAUSE ARREST

☐ Statement by defendant

☐ Statement of one or more eye-witnesses

☐ Other: Specify: _____

[Signature] ISP/518
SIGNATURE OF PEACE OFFICER, AGENCY AND CALL #

04/24/2014
04:27

Nez Perce County Sheriff
LAW Incident Table:

585
Page: 1

Incident Number: 14-N2083 Attachment
Nature: Agency Assist Case Number: Image:
Addr= 1150 WALL ST Area: D3C N LEW, E OF 17
City: Lewiston ST: ID Zip: 83501 Contact: D22
Complainant& 211
Lst: NEZ PERCE COUNTY SHERIFF Fst: Mid:
DOB: / / SSN: - - Adr= 1150 WALL ST
Rac: Sx: Tel: (208)799-3131 Cty: Lewiston ST: ID Zip: 83501

Offense Codes: AGAS

Reported: AGAS Observed: AGAS

Circumstances:

Rspndg Officers: Bonds Brian
Rspnsbl Officer: Bonds Brian Agency: NPCS CAD Call ID: 1404-0815
Received By: Brown Victoria Last RadLog: 03:03:42 04/24/2014 24
How Received: T Telephone Clearance: RPT Written Incident Repo
When Reported: 03:01:53 04/24/2014 Disposition: CLO Disp Date: 04/24/2014
Occurrd between: 03:01:53 04/24/2014 Judicial Sts:
and: 03:01:53 04/24/2014 Misc Entry:

MO:

Narrative: (See below)
Supplement: (See below)

=====

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
MI	1947	04/24/2014	Attachment	Attachment
NM	211	04/24/2014	NEZ PERCE COUNTY SHERIFF,	*Complainant
NM	62171	04/24/2014	NEAL, BRIAN ELLIS	Offender
CA	1404-0815	04/24/2014	03:01 04/24/2014 Agency Assist	*Initiating Call

LAW Incident Offenses Detail:

Offense Codes

Seq	Code	Amount
1	AGAS Agency Assist	0.00

LAW Incident Responders Detail

Responding Officers

Seq	Name	Unit
1	Bonds Brian	D22

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
03:03:42 04/24/2014	1	D22	24	NPCS3	NPCS	incid#=14-N2083 Assignment Com
03:03:25 04/24/2014	1	D22	ASSGN	NPCS3	NPCS	incid#=14-N2083 Assigned to a

Narrative:

Nez Perce County Sheriff's Department

Date and Time: Thu Apr 24 03:01:52 PDT 2014

Report Type: Agency Assist to ISP ref: L14000346

Reporting Officer: Cpl Brian Bonds

On the above date and time I was asked by ISP Trooper Sgt K Yount that subject Brian Ellis Neal might possibly have contraband on his person. After a cursory search was performed by myself I had subject NEAL enter Dress In 1 for a complete strip search. See below for specifics on the search per policy.

During this search NEAL handed me his clothing one piece at a time. I found nothing of evidentiary value in the white t-shirt or grey slacks.

In the black brief type underwear Neal handed me I did find 1 (one) black tube type sock with what felt like solid item(s) in the toe. This sock had been stuffed inside NEAL's briefs. Upon feeling this solid item(s) I immediately had Deputy Kaltenbaugh retrieve jail clothing for NEAL and secured him inside the room to finish dressing. I then immediately advised Trooper Yount of the black sock with the unknown item(s).

I rolled the top of the sock down and emptied the contents onto the floor of the booking area in front of Trooper Yount, Deputy Kaltenbaugh and Deputy Cook.

The following is an inventory of the items found:

1. 1 (one) small clear plastic baggie with what appeared to be 4 yellow tablets inscribed with the letter V on one side and the numbers 36/01 inscribed on the opposite side. Deputy Kaltenbaugh logged into Pill Identifier and found these to be Acetaminophen/Hydrocodone 325/10.

2. 1 (one) small clear plastic baggie with what appeared to a dark resin type substance. Trooper Yount suggested this could possibly be Black Tar Heroin.

3. 1 (one) small clear plastic baggie with what appeared to be a solid white crystalline substance in a tubular shape that was approximately 2 inches long and 1/2 inch in diameter. From my training and experience I did recognize this as a possible match to crystal methamphetamine or rock cocaine. These items have been turned over to Trooper Yount as evidence.

I then had Deputy Kaltenbaugh take photos of these items. These photos have been downloaded to this case number.

Search Type:

[xxx] Strip Search [] Modified Strip Search [] Body Cavity Search

On the above date and time, I Cpl Brian Bonds performed an unclothed body search on Brian Ellis Neal because the inmate came in as a custody arrest from ISP Trooper Ken Yount who stated there was possibly some drug involvement. The search was performed in Dress In 1 with a Deputy of the same gender, out of view of any deputies who were of the opposite sex.

The search in question was performed within the set guidelines of the Nez Perce County Sheriff's Office Custody Manual, C 528.4 "Modified Strip Searches, Strip Searches and Physical Body Cavity Searches". Any item defined as contraband that was seized during the search, will be documented, the contraband placed in an evidence bag signed by myself and turned over to Trooper Yount as evidence.

Cpl Brian Bonds

Law Supplemental Narrative:

Seq	Name	Date	Supplemental Narratives Narrative
1	Kaltenbaugh J	04:06:41	04/24/2014

Kaltenbaugh
Nez Perce County Sheriff Supplemental Report

At approximately 0300 on 04/24/2014 Cpl. Bonds requested my assistance in a strip search of Brian Neal. Neal was delivered to Nez Perce County Jail by the Idaho State Police on a paraphernalia charge. Due to this pending charge and known prior drug charges it is standard procedure to conduct a strip search of an individual to insure no contraband is brought into the facility. During the search of Neal I observed from viewing window outside the east end of dress-in 1. Cpl. Bonds instructed Neal to undress and give his clothes to Cpl. Bonds. When the search of the clothes was being done, Cpl. Bonds found a black sock inside Neal's underwear. Neal was given jail issued clothes to put on and his personal items were placed in a property box. The contents of the black sock were a clear zip lock bag containing a dark, tar like substance; another clear zip lock bag of a crystalline rock like substance; and a small clear bag containing 4 yellow oval shaped pills imprinted with a v and 3601. For further information see Cpl. Bond's attached report.

End of Report

Deputy Kaltenbaugh, J. D84

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2014 APR 24 PM 12 11

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. GR14-03285

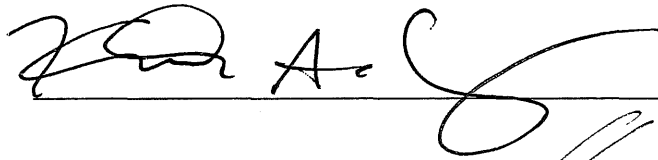
AFFIDAVIT FOR INITIAL
DETERMINATION OF PROBABLE
CAUSE PURSUANT TO ICR 5(C)

Comes now the undersigned peace officer who on oath deposes and says:

1. Affiant is a duly qualified peace officer serving with the Idaho State Police.

2. The above-referenced defendant has been arrested for the crime(s) of:
COUNT I - TRAFFICKING IN HEROIN, I.C. § 37-2732B(a)(6)(A), a felony;
COUNT II - POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, I.C. § 37-2732(a)(1)(A), a felony; without a warrant on April 24, 2014, and your affiant asks that a Magistrate, after your affiant lays a Complaint before him, determine whether there is probable cause to believe that said offense has been committed and that the defendant has committed it.

The basis for said arrest is contained within the attached accurate copies of documents on file with the above-referenced law enforcement agency, which said copies are incorporated herein by reference.



SUBSCRIBED and SWORN to before me this 24TH day of April 2014.



JUDGE OR CLERK OF THE COURT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, COUNTY OF NEZ PERCE
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

v.

Brian E. NEAL

DOB: [REDACTED]

Defendant.

CASE NUMBER. _____
AFFIDAVIT OF PROBABLE CAUSE
WARRANTLESS ARREST
UNDER I.C.R. 5

State of Idaho,

: ss

County of Nez Perce

I, Sergeant Ken Yount, the undersigned peace officer, being first duly sworn, deposes and states under oath as follows:

1. I am a duly qualified and acting peace officer for the Idaho State Police.
2. I have probable cause to believe the above identified defendant committed the offense(s) of **Trafficking Heroin [2-7 grams], Idaho Code 37-2732b(6)(A); Felony Possession of Methamphetamine with Intent to Deliver, Idaho Code 37-2732(a)(1)(A); Introduction of a Major Contraband into a Correctional Facility X 3 [Hydrocodone/Methamphetamine/Heroin], Idaho Code 18-2510(3)(a).**
3. The facts upon which I rely in believing there is probable cause that the above defendant committed the above offense(s) are:

1. On April 24, 2014, approximately 0041 hours, I, Sergeant Ken Yount, stopped a black 2005 Pontiac Bonneville (Washington registration ANW0187) in the parking lot of Jack In The Box, located at 1903 G Street in Lewiston, Nez Perce County, Idaho. The vehicle failed to signal when merging onto westbound US Highway 12 from State Highway 128 (near the intersection of 3rd Avenue North), in violation of Idaho Code 49-808(1). The vehicle failed to display a continuous signal (was approximately one second) prior to changing lanes while traveling westbound on US Highway 12 near milepost 1.5, in violation of Idaho Code 49-808(2). I had previously observed the vehicle parked at the Dyna-Mart service station, located at 1920 Highway 128, in a lighted area next to the fuel pumps. I observed the windows appeared to be tinted darker than legal, in violation of Idaho Code 49-944.

2. I contacted the male driver and sole occupant on the driver's side. The driver identified himself with his Washington driver's license as Brian E. NEAL ([REDACTED]). I immediately observed that NEAL's entire

AFFIDAVIT OF PROBABLE CAUSE
FOR WARRANTLESS ARREST
UNDER I.C.R. 5

face was wet and appeared to be covered with perspiration. The temperature was approximately 45 degrees and it was raining lightly. NEAL was wearing a sweatshirt, pants and a baseball cap. I also observed that NEAL appeared tense and his left leg was continuously bouncing. I attributed these observations to extreme anxiety, based on my training and experience.

3. NEAL said he thought he "did right" when changing lanes and explained the windows were tinted when he purchased the vehicle. He said the tint had never been measured before but he believed the windows were 35% because the prior owner was a cop. I observed NEAL was the registered owner of the vehicle and he provided an expired proof of liability insurance.

4. NEAL avoided eye contact with me and spoke very quickly. He said he lived in Pasco, Washington and was in town to visit his son. As we conversed, NEAL's anxiety remained and his left leg continued to tremble. He appeared to have difficulty sitting still. NEAL said he had just left the gas station in North Lewiston.

5. I asked NEAL if he was sweating and he said yes because he was wearing a coat. I confirmed he had just left the gas station and he said he was inside. NEAL's head and face continued to perspire and I asked why he was so anxious. NEAL said it was because he got pulled over.

6. I asked NEAL if all the property in the vehicle belonged to him and he immediately looked away, stammered and said, "Everything." I asked about weapons and firearms and he quickly stated, "Absolutely not." I asked if there was anything illegal in the vehicle and he again said, "Absolutely not." I observed NEAL's t-shirt depicted a marijuana leaf behind the Space Needle (Seattle). I asked NEAL if he promoted marijuana and he said no, but thought it should not be illegal. NEAL said he didn't partake in it (marijuana) but didn't care either way. NEAL's anxiety had not diminished and I asked if there was any marijuana in the vehicle; he said, "Absolutely not."

7. I commented that he still appeared to be perspiring from his face and NEAL said he still felt hot and removed his hat. I commented that the weather was pretty cool and NEAL agreed. I confirmed there was nothing illegal in the car that caused his anxiety. NEAL said he suffered from anxiety and used medications, such as Xanax or Klonopin for the condition. NEAL said he last took his medication three days ago. NEAL said he had been in the Lewiston area for four or five days to visit his son and other friends. I asked NEAL why he was out so late if he was visiting his son. NEAL said he was just "mobbing around" and came to get something to eat. NEAL said he was previously with a friend and planned to go out to the Casino.

8. Based on my training, experience and observations of NEAL's behavior, I suspected he was involved in major criminal activity. I also suspected he was possibly impaired by drugs, such as the Central Nervous System Stimulant methamphetamine (meth), based on my previous training and experience as a Drug Recognition Expert (DRE). Based on my previous assignment as an ISP Detective, I had knowledge that the Tri-Cities area (Kennewick, Pasco, Richland Washington) was a source location for drugs that are often distributed locally.

9. I asked NEAL if he would allow me to search his vehicle when we finished but he declined. I told NEAL that his behavior caused me to suspect he possessed contraband. I asked if there was any reason a narcotics canine would alert to the vehicle; he said no. I told NEAL I was going to request a canine respond and asked if he possessed any drug paraphernalia; he said no. I observed NEAL's breathing became more rapid and he perspired profusely from his face, which I attributed to his increased anxiety. I asked NEAL about his breathing and perspiration; he said it was because I was giving him "the third degree." I said I was asking him simple questions. NEAL replied, "I know, I apologize." I pointed out that he couldn't keep his leg still and NEAL said he wasn't doing anything illegal and just felt nervous when cops pull him over. I requested NEAL exit the vehicle due to his behavior.

10. Approximately 0047 hours, I requested Idaho State Police (ISP) Trooper (Tpr.) Dave Wesche respond to assist. I also requested ISP Dispatch request the Lewiston Police Department (LPD) call out their drug-detection canine unit, which was not currently on duty. I requested Dispatch check NEAL's criminal history for prior drug offenses and check his driver's status.

11. I confirmed NEAL hadn't taken his prescribed medication for anxiety. I asked if he used any other medications or controlled substances and he said no. NEAL had removed his sweatshirt and I observed multiple scabs on his forearms. I suspected the scabs were prior injection sites from using hypodermic needles to inject drugs, such as methamphetamine (meth). NEAL said it was common to perspire due to his anxiety condition and he was hot from wearing a sweater. He said his condition caused him to sweat, have panic attacks, talk fast and get nervous. NEAL said he also saw a psychiatrist. I observed NEAL wipe the perspiration off his face and he said it felt good in the cool weather.

12. Approximately 0052 hours, Tpr. Wesche arrived to assist. I briefly explained to Tpr. Wesche my observations of NEAL and requested he stand with him. I began to complete a citation for the insurance violation. LPD Officer (Ofc.) Chris Reese, who is a drug-detection canine handler, called me to inquire about my request for his response. I briefly explained my observations to Ofc. Reese and suspicion that NEAL might be impaired by drugs. Dispatch advised NEAL returned current and clear through Washington and had prior felony drug offenses on his criminal record. Dispatch advised NEAL was on probation and I requested a check to verify he was authorized to travel to Idaho.

13. I contacted NEAL and obtained his current address in Pasco, Washington. I asked NEAL if he was on probation and he said no. NEAL said he was released from probation about two months ago. NEAL said he had served time in prison in Washington for bank robbery. I asked NEAL if he had ever been arrested for drug offenses and he replied, "Um, no. Uh, yeah, I have; for marijuana back in 2004." I asked NEAL about his probation officer and he wasn't sure of his name.

14. Dispatch confirmed NEAL was on active probation and his probation officer on record was Charles Dorendorf in Pasco. Dispatch was unable to contact the probation officer or research restrictions because it was after hours. Dispatch advised of a misdemeanor warrant for NEAL's arrest issued by Tacoma Police; the warrant was non-extraditable.

15. I completed the insurance citation and prepared my tint meter to measure the window tint. During this time, approximately 0107 hours, Ofc. Reese arrived with his canine. I updated Ofc. Reese about the circumstances of the contact and requested he deploy his canine on the vehicle. Ofc. Reese spoke with NEAL while I measured the window tint. The right front side window measured 17%; legal is 35%. The right rear side window measured 16%; legal is 35%. The rear window measured 26%; legal is 35%. Idaho Code allows for 3% tolerance, plus or minus.

16. Approximately 0111 hours, Ofc. Reese deployed his canine around the outside of the vehicle. A short time later, Ofc. Reese advised his canine alerted to drug odor coming from the vehicle. Ofc. Reese explained the alert to NEAL, who denied there were any drugs in the vehicle. He commented there might be drug odor in the vehicle because of the prior owner, but he had owned the car for approximately six months.

17. Approximately 0116 hours, Ofc. Reese and I searched the vehicle. I entered on the passenger side and Ofc. Reese entered on the driver's side. I located a cell phone in the center cup holder. I opened the center console and observed a second, identical cell phone. There was also a digital scale in the center console. I observe the residue of a white crystalline substance on the scale that, based on my training and experience, appeared consistent with

meth residue. There were other miscellaneous personal items inside the center console. Ofc. Reese located a silver metal measuring cup that contained a black residue in the lower pocket of the driver's door. There were three used syringes inside a plastic toothbrush container that was located on the floor in front of the driver's seat. There was a black backpack inside the trunk. I located a new syringe sealed inside plastic packaging in the backpack. There was another used syringe inside the backpack. There was a laptop computer and notebook inside the backpack that NEAL later claimed as his property.

18. The notebook contained school-related notes on the first few pages. The rest of the pages were blank, save for the final page. There was a list of letters and names with numbers listed next to them (Ben- 140.00; Mat- 90.00, 470) on the last page. Some of the numbers listed were crossed out with other numbers listed next to them (R- 75.00 [crossed out], then 225). Based on my training and experience, I suspected the notes were a pay/owe sheet to track clients and money owed from drug distribution.

19. In the front passenger area I had located a smaller notepad from the Red Lion Hotel with similar notes written on it. There were multiple letters listed with three digit numbers (example: 590) written next to them. Again, some of the numbers had been crossed out with new three digit numbers listed next to them (G- 200 [crossed out], then 400). These notes were also consistent with a pay/owe sheet. NEAL later admitted the notebook belonged to him and contained notes from school and a "fantasy football league."

20. I asked NEAL when he last used meth. NEAL replied, "Methamphetamine? Um, years." I asked why there were multiple used needles in the car and NEAL said, "Um, my Aunt's a diabetic, maybe." I told NEAL the needles weren't for diabetes and he said, "Um, yeah, I don't use meth. I don't do weed." NEAL said he was recently released from probation and didn't have any dirty urine analyses.

21. I requested NEAL perform the Standardized Fields Sobriety Evaluations (SFSE's), to determine if he was impaired. The evaluations included checking for a lack of convergence (eyes) and the Modified Romberg evaluation. During the Walk and Turn evaluation, I observed NEAL walked with straight legs that appeared very stiff. His movements were very deliberate compared to the manner in which he previously walked about the scene. I suspected NEAL's movements were the result of his efforts to conceal contraband on his person. Based on my training and experience, NEAL exhibited signs and symptoms consistent with drug use; however, I determined he was not impaired. I seized all items of contraband except for the syringes, which I displayed in front of my patrol camera and then discarded in the vehicle.

22. I again asked NEAL if he had used the syringes to inject drugs into his body and he said no. I requested he expose his arms as he had put on a sweatshirt for warmth. I observed multiple scabs and marks on both of NEAL's arms. NEAL denied the marks were from injection sites and said he had been bitten by a dog. I asked NEAL about the scale with crystalline residue that I believed to be meth. NEAL said he didn't know about the scale. NEAL said he owned two black flip-style cell phones that were in the car. I told him one of the phones was inside the center console next to the scale with residue, which indicated he had knowledge of the scale. NEAL said, "I knew that the phone was in there (center console)."

23. Approximately 0153 hours, I arrested NEAL for possession of drug paraphernalia. I asked NEAL if he had any contraband on his person and he said no. I observed a bulge in the crotch area of his pants but was unable to discern if it was contraband or his anatomy. I found a small piece of cotton inside NEAL's vest pocket. I commented that cotton is often used with needles to inject drugs and asked NEAL if he had injected meth at the gas station; he said no. I found a cotton swab in NEAL's left front pant pocket. I told NEAL that he would be searched more thoroughly at the jail, including a full body search. I cautioned NEAL that he could face additional

charges if he transported contraband into the jail. NEAL continued to deny that he possessed any contraband. I secured NEAL in the back seat of my patrol car.

24. A large amount of cash was found in NEAL's wallet and he estimated the total was approximately \$1,800. The actual amount was \$1,677. There were thirteen \$100 bills, four \$50 bills, eight \$20 bills, one \$10 bill, one \$5 bill and two \$1 bills. NEAL said the cash included \$1,200 he won recently at the Clearwater River Casino. I found a receipt dated April 16, 2014 that indicated NEAL won \$1,200 at the casino. NEAL later explained he was in Lewiston last week to visit his son when he won the cash. He said he returned to Pasco for work and school and then returned this week to visit his son again.

25. Approximately 0202 hours, I advised NEAL of his Miranda Rights, which I read from a card. NEAL said he understood. Tpr. Wesche completed an inventory of the vehicle and Bernard's Towing removed it for safekeeping. NEAL asked if he could be released with a citation for possession of drug paraphernalia; I told him no because he had been arrested for that offense.

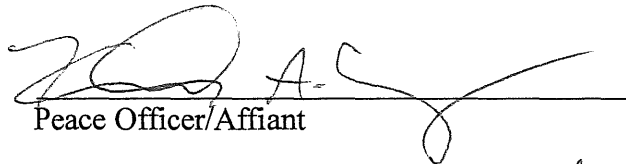
26. I transported NEAL to the Nez Perce County Detention Center in Lewiston. During transport, NEAL asked about his court appearance or if he could post bond. NEAL said he tried to cooperate with me and told me there was nothing in his car. I replied that there was drug paraphernalia in the car and NEAL said he meant nothing serious. I asked why he wasn't honest with me about the scale and he replied, "I didn't even think of that." I told NEAL I would have appreciated him telling me about the needles to avoid getting stuck by one. NEAL said he wasn't even thinking about that and apologized. NEAL said, "I'm thinking about guns and serious shit man." I asked NEAL when he last "shot up" (used meth) and he said it was a while ago, the other day. NEAL again said it had been a while since he used and that was probably why he was sweating so badly. I asked NEAL why he had four syringes in his car and he said they were from four different uses because he tried to be clean with needles. I asked NEAL where he injected and he said in his muscles and different locations on his body. NEAL said he attended school part time and worked in receiving at a business in Burbank, Washington. I asked if he was using four or five times a week and NEAL said yes, or about that many times every couple weeks. I asked if he used about one gram of meth a week and he replied, "Yeah, it depends. That shit's cheap over in the Tri-Cities." I commented that most people that use meth sell a little on the side so they can support their habit for free. NEAL replied, "Yeah, I see what you're saying." I asked about the notebooks and NEAL denied the notes were to keep track of drug sales. I asked why he had a scale and NEAL said, "If you get something for yourself you want to make sure that they're not ripping you off, you know?" NEAL again said meth is cheap in the Tri-Cities but expensive in Lewiston and that's why he won't deal with people here. I asked how much meth he brought over with him and he said, "I didn't bring shit over with me, that's my problem." I commented that he had enough cash to purchase drugs and NEAL said he didn't have a bank account and had bills to pay. I released NEAL to the custody of jail staff for booking. I requested a full strip search of NEAL based on the circumstances of my investigation.

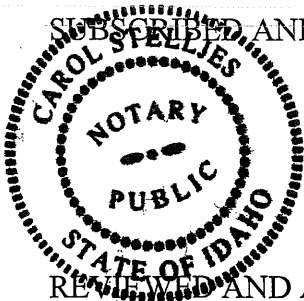
27. Approximately 0300 hours, Nez Perce County Sheriff's Deputy (Dep.) Brian Bonds conducted the strip search of NEAL. Dep. Bonds returned to the booking area moments later with a black tube sock that contained a round object about the size of a baseball. Dep. Bonds said he found the sock when NEAL handed his underwear to him during the search. Dep. Bonds emptied the contents of the sock onto the floor in the booking area. I observed a black substance inside a plastic baggy that was tied closed. Based on my training and experience, the substance appeared consistent with heroin. I estimated the weight of the heroin to be about one quarter ounce (7 grams). There was a white crystalline substance inside another plastic baggy that was tied closed. Based on my training and experience, the substance appeared consistent with meth. I estimated the weight of the meth to be about one half ounce (14 grams). There was a small plastic baggy containing four yellow oval pills that were later identified as hydrocodone, a Schedule III controlled substance. I seized the contraband as evidence. I also seized the

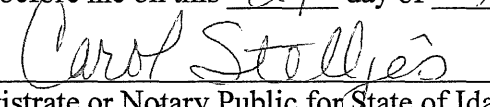
notebook, notepad and two cell phones as evidence of drug trafficking. I seized the cash (\$1,677) as evidence and suspected proceeds of drug trafficking/distribution.

28. I went to the ISP District 2 Office in Lewiston to process the evidence. I used an NIK field testing kit to test a sample of the white crystalline substance; it tested presumptively positive for meth. The meth weighed 11.0 grams. I used an NIK field testing kit to test a sample of the suspected heroin; the results were inconclusive. However, the black tar-like substance smelled strongly of vinegar and was of the consistency that, based on my training and experience, was consistent with heroin. ISP Detectives informed me that on multiple occasions, heroin from controlled purchases failed to field test positive but was later confirmed as heroin by the ISP Forensic Lab. The suspected heroin weighed 6.8 grams.

29. I subsequently completed the necessary paperwork to charge NEAL with possession of drug paraphernalia, in violation of Idaho Code 37-2734A(1), possession of a Schedule III controlled substance (hydrocodone), in violation of Idaho Code 37-2732(c)(3), possession of meth with intent to deliver, in violation of Idaho Code 37-2732(a)(1)(A), trafficking heroin (2-7 grams), in violation of Idaho Code 37-2732b(6)(A), and three (3) counts of introduction of major contraband into a correctional facility, in violation of Idaho Code 18-2510(3)(a); each controlled substance (hydrocodone, meth, heroin) constituted one count.


Peace Officer/Affiant



SUBSCRIBED AND SWORN to before me on this 24 day of April,

Magistrate or Notary Public for State of Idaho
Residing at: Lewiston, Id
My Commission expires: Apr 10, 2019

REVIEWED AND APPROVED FOR CHARGING BY NEZ PERCE COUNTY PROSECUTING ATTORNEY'S OFFICE

Dated this _____ day of _____, 2014.

Nez Perce County Prosecuting Attorney's Office

Pursuant to I.C.R. 5(c) the above affidavit has been examined and probable cause is found that the above named defendant committed the offense(s) alleged and defendant shall be held in custody pending issuance of criminal complaint.

Dated this _____ day of _____, 2014.

Magistrate

FILED

2014 APR 24 PM 12 11

PATTY O. WEEKS

CLERK OF THE DIST COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

VS.

BRIAN E. NEAL,

Defendant.

CASE NO.

CR14-03285

INITIAL DETERMINATION OF
PROBABLE CAUSE

The undersigned Magistrate having examined the Affidavit submitted by Ken Yount, along with the attached documents, and the Complaint against the above defendant for the crime(s) of: **COUNT I - TRAFFICKING IN HEROIN, I.C. § 37-2732B(a)(6)(A), a felony; COUNT II - POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, I.C. § 37-2732(a)(1)(A), a felony;** having been laid before the undersigned Magistrate, it is hereby determined by the undersigned Magistrate that there is probable cause to believe that the said offense has been committed, and that the defendant has committed it.

DATED this 24th day of April 2014.

MAGISTRATE

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 2923

FILED

2014 APR 24 PM 12:11

PATTY O. WEEKS
CLERK OF THE DIST. COURT.
Reynolds
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

D.O.B.: [REDACTED]

S.S.N.: [REDACTED]

Defendant.

CASE NO. **CR14-03285**

COMPLAINT - CRIMINAL

STATE OF I D A H O)

: ss.

County of Nez Perce)

PERSONALLY APPEARED Before me this 24th day of April 2014, in the
County of Nez Perce, Ken Young, who, being first duly sworn,
complains and says: that BRIAN E. NEAL, did commit the following crime(s):

COUNT I

TRAFFICKING IN HEROIN, I.C. § 37-2732B(a)(6)(A), a felony.

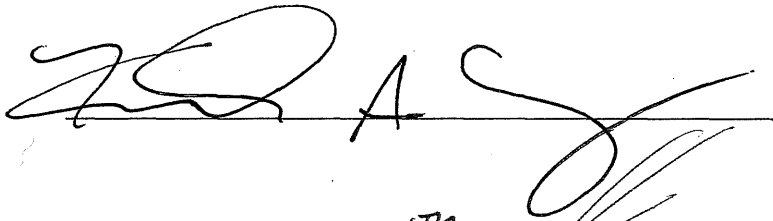
That the defendant, BRIAN E. NEAL, on or about the 24th day of April 2014,
in the County of Nez Perce, State of Idaho, did knowingly possess two (2)
grams or more of Heroin, a Schedule I(c) controlled substance, or any salt,
isomer, salt of an isomer thereof, or of any mixture or substance containing a
detectable amount of any such substance.

COUNT II
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO
DELIVER, I.C. § 37-2732(a)(1)(A), a felony

That the Defendant, BRIAN E. NEAL, on or about the 24th day of April, 2014 in the County of Nez Perce, State of Idaho, did unlawfully possess a controlled substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance, with the intent to deliver the aforementioned controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

Said Complainant therefore prays that BRIAN E. NEAL be dealt with according to law.



SUBSCRIBED and SWORN to before me this 24th day of April 2014.



MAGISTRATE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE
MAGISTRATE DIVISION

THE STATE OF IDAHO,

Plaintiff,

vs.

BRIAN, NEAL

Defendant,)

NO.

CR14-03285 2014 APR 24 AM 7 02

NOTIFICATION OF RIGHTS -
FELONY

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Reynolds
DEPUTY

The purpose of the initial appearance is to advise you of your rights and the charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court will appoint one to help you. If you are found guilty or plead guilty, you may be ordered to reimburse Nez Perce County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- You have the right to a preliminary hearing before a judge.
- The purpose of a preliminary hearing is to determine whether probable cause exists to believe you have committed the crime(s) charged. A preliminary hearing is not a trial to decide guilt or innocence.
- You can cross-examine all witnesses who testify against you.
- You can present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If the court finds probable cause exists that you committed the crime(s) charged, or if you waive your preliminary hearing, you will be sent to the District Court for arraignment.

If you have questions about the charge(s), about your rights or the court process, don't hesitate to speak up. It is important that you understand.

Acknowledgement of Rights

I have read this entire document, and I understand these rights as set forth above.

Date

4/24/14

Defendant's Signature

[Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE
MAGISTRATE DIVISION

THE STATE OF IDAHO,

Plaintiff,

vs.

BRIAN, NEAL

Defendant,)

NO.

CR14 201 APR 25 AM 7 01

NOTIFICATION OF RIGHTS
MISDEMEANOR

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

The purpose of the initial appearance is to advise you of your rights and the charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court may appoint one to help you. You may be ordered to reimburse Nez Perce County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- If you plead not guilty, you can have a trial before a judge or jury of six people.
- You can cross-examine all witnesses who testify against you.
- You may present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If you plead guilty, you waive your right to a trial, your right to remain silent, and your right to confront witnesses against you. If you wish to make a statement before you are sentenced, you may do so. You can appeal the court's sentence by filing a timely Notice of Appeal.

If you have any questions about the charge(s), about your rights, or about the court process, don't hesitate to speak up. It is important that you understand.

Acknowledgement of Rights

I have read this entire document, and I understand these rights as set forth above.

Date

4/24/14

Defendant's Signature



waives right to public defender at this time

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

Brian E Neal,

Defendant.

FILED

2014 APR 24 PM 2 09

PATTY O. WEEKS

CLERK OF THE DIST. COURT

Case No: CR-2014-0003285

COMMITMENT, HELD TO ANSWER

THE STATE OF IDAHO TO THE SHERIFF OF NEZ PERCE COUNTY, GREETINGS:

An Order having been made this day by me that Brian E Neal be held to answer upon the charge of Drug-Trafficking in Heroin (2 grams to Less Than 7 grams) Controlled Substance-Manufacture or Deliver, or Possess with Intent to Manufacture or Deliver Drug Paraphernalia-Use or Possess With Intent to Use Controlled Substance-Possession of committed in said Nez Perce County on or about 4/24/2014, 4/24/2014, 4/24/2014, 4/24/2014, .

Now, YOU, the said sheriff, are commanded to receive the said Defendant into your custody and detain Brian E Neal until legally discharged, and hereby order that the said Defendant be admitted to bail in the sum of \$ 50,000.00.

Dated this 24th day of April, 2014.

MAGISTRATE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

Case Title State v Brian Neal
Hearing Type Initial Arraignment Case # CR14-3285
Judge KENT J. MERICA
Clerk Evans
Date 4/24/14 @01:15 p.m.

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Start Time 020010
Defendant present Videe With/Without Counsel With
Court advises Defendant of Rights & Charge(s) of penalties
Defendant requests Public Defender signs Affidavit of Financial Status _____
Judge Appoints and Orders Kwate to Represent Defendant.
TI req. \$150,000.00 bond.
Bond Set \$ 50,000.00 OR'ed _____ No Contact Order entered _____
✓ Next Preliminary Hearing date 05-07-14 at 01:30 p.m.

Other: _____

Recess 020320

FILED

2014 APR 24 PM 2 09

PATTY O. WEEKS
CLERK OF THE DIST. COURT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN, NEAL

Defendant.

CASE NO.

CR14-03285

AFFIDAVIT OF FINANCIAL STATUS,
APPLICATION FOR PUBLIC
DEFENDER, AND ORDER

This application must be filled out completely before it can be reviewed for assignment of a public defender. All questions must be answered. NO EXCEPTIONS.

Personal Information

Full Name: Brian E Neal

Address: 7613 NW 4th Ave

City: Dayton

State: OR

Phone #: 509 572 0135

Zip: 97112

Income Information

Are you employed: No ☒ Yes ☐ Where? Self

What is your gross income (amount before taxes or any other withholdings are taken out)?

Monthly: \$ 0 Bi-weekly: \$ 0 Weekly: \$ 0

What is your hourly income? \$ 0 How many hours do you work per week? 0

Married? No ☒ Yes ☐ Spouse's Name: None

What is your spouse's gross income (amount before taxes or any other withholdings are taken)?

Monthly: \$ 0 Bi-weekly: \$ 0 Weekly: \$ 0

Do you have any other sources of income? No ☒ Yes ☐

If yes, from whom? Self How much per month? 0

Please list which, if any, of the following public assistance you receive:

☐ Self Reliance Program Funds ☐ SSI or SSDI ☒ Food Stamps
☐ County or General Relief ☒ Medicare/Medicaid ☐ Cash Assistance
☐ Other. Please specify: None

Household Information

Please list each of the following dependents which reside in your household and for whom you are financially responsible:

_____ Spouse
_____ Children. How many total? _____ Please list age of each child: _____
_____ Other. Please specify relationship: _____

Debts

Please list the following debts you pay per month:

Mortgage/Rent: 300 Food: 750 Utilities: _____
Car: 200 Medical: 1 Credit Cards: _____
Loans: _____ Child Support: _____ Other: _____

Assets

Do you own your home? No _____ Yes X Equity: _____
Do you rent your home? No _____ Yes X _____
Do you live with your parents? No X Yes _____

Please list the approximate value of the following property you own:

Motor Vehicles: How many? 1 Total Value of All Vehicles: \$3500

Make and Model of Each Vehicle: 2000 Pontiac

Furniture/Appliances/Electronics: \$ _____

Sporting Equipment: \$ 0 Guns: How many? 0 Value: \$ _____

Boats/Recreational Vehicles/Motorcycles/Snowmobiles: \$ _____

Money in savings/checking accounts: \$ _____ Name of Bank: _____

Cash on hand: \$ _____ Stocks/Bonds: \$ _____

Jewelry: \$ _____

Other. Specify: _____ \$ _____

What is the last year you filed an income tax return? _____ Amount of return: \$ _____

Can you borrow money to pay an attorney? No X Yes _____ If yes, how much? \$ _____

I HEREBY ACKNOWLEDGE THAT I MAY BE REQUIRED TO REIMBURSE NEZ PERCE COUNTY FOR THE SERVICES OF THE PUBLIC DEFENDER.

I HEREBY CERTIFY THAT ALL OF THE ANSWERS TO THE FOREGOING QUESTIONS ARE UNDER OATH AND SWEAR THAT THE SAME ARE TRUE AND CORRECT. IF I HAVE INTENTIONALLY ANSWERED ANY OF SAID QUESTIONS INCORRECTLY, I MAY BE PROSECUTED FOR PERJURY.

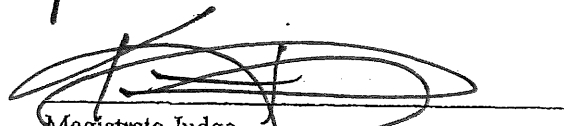
Dated this 24th day of April, 20____.

[Signature]
Defendant's Signature

ORDER

Based upon the information contained in the Court record and on the above-filed affidavit, the Court hereby X GRANTS Kurase DENIES the defendant's application for public defender. _____ is hereby appointed as counsel to represent the defendant in the above-entitled case.

Dated this 24th day of April, 2014.


Magistrate Judge

FILED

2014 APR 24 PM 2:59
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Reynolds
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Brian Neal

Defendant,

CASE NO. CR14-3285

- () NOTICE OF PRELIMINARY
CONFERENCE
(X) NOTICE OF PRELIMINARY
HEARING
() NOTICE OF SENTENCING
() NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing
has been set in your case at which you are to appear in the Courtroom of the Nez Perce County
Courthouse, as indicated below:

- () PRELIMINARY CONFERENCE to begin at _____, __.m., on the
_____ day of _____, 20____.
- (X) PRELIMINARY HEARING to begin at 1:30 p.m., on the
14th day of May, 2014.
- () SENTENCING to begin at _____, __.m. on the _____ day of
_____, 20____.
- () HEARING to begin at _____, __.m. on the _____ day of
_____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID
TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A
WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

DATED this 24th day of April, 2014.

BY ORDER OF:

(X) Copy to Prosecuting Attorney

(X) Copy handed to Defendant *Scanned*

() Copy mailed to Defendant

(X) Copy mailed/handed/placed in
basket to Defendant's Attorney
Kwate Law

Murica
Judge

Gwarry
Clerk

FILED

2014 APR 28 PM 4 04

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03285

REQUEST FOR DISCOVERY

TO: THE PROSECUTING ATTORNEY, NEZ PERCE COUNTY, STATE OF IDAHO:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence, and materials:

ONE: Defendant hereby requests pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and I.C.R. 16(a) that the State disclose to the defense any and all exculpatory material and/or exculpatory information in this case. Defendant specifically objects to and rejects any requirement or request that defendant notify the State, in writing or otherwise, of the defenses that he or she is or may be asserting in this case as a condition of disclosure of such exculpatory information and/or exculpatory

material to the defense. Any such precondition for disclosure of exculpatory material and/or exculpatory material and/or exculpatory information violates the 4th, 5th, and 6th Amendments to the United States Constitution, the ruling in Brady v. Maryland, 373 U.S. 83 (1963), I.C.R. 16(a) and (c), attorney-client privilege and the work product doctrine. By this demand for disclosure the defendant demands production of all material and information which the State does not disclose and defendant demands notification of the State's determination to withhold material and information from defendant so that defendant can file a timely motion to compel the disclosure and production of the withheld material and/or information. Without waiving any objection to the State's request that defendant notify the State of defendant's planned defense(s) the State is further notified that a defense in this and every case in which this Request for Discovery is made includes, but is not limited to, the defense that material and/or information withheld by the State was and is exculpatory and if disclosed to defendant would have resulted in defendant's acquittal or dismissal of all charges.

TWO: Permission for the defendant to inspect and copy or photograph any relevant, written, or recorded statements made by the defendant or copies thereof within the possession, custody or control of the state.

THREE: The substance of any relevant, oral statement made by the defendant or copies thereof within the possession, custody or control of the state.

FOUR: Permission for the defendant to inspect and copy or photograph any written or recorded statements of a co-defendant and the substance of any relevant, oral statement made by a co-defendant, whether before or after arrest, in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

FIVE: Furnish to the defendant a copy of the prior criminal record of the defendant, if any.

SIX: Permission of the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant.

SEVEN: Permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case or copies thereof within the possession, custody, or control of the prosecuting attorney.

EIGHT: Furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial, together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney.

NINE: Furnish to the defendant a written list of the names and addresses of all who may be called by the state as expert witnesses at the trial. For all such expert witnesses, furnish to the defendant a written summary or report of any testimony the state intends to introduce, including a description of each witnesses's opinions, the facts and data for those opinions, and the witnesses's qualifications.


TEN: Furnish to the defendant statements made by the prosecution's witnesses or prosecuting attorney or agents or to any official involved in the investigatory process of the case.

ELEVEN: Furnish to the defendant reports and memoranda made by any police officer or investigator in connection with the investigation or prosecution of the case.

The undersigned further requests permission to inspect and copy said information, evidence, and materials not required to be furnished within fourteen (14) days from receipt of the notice, or at such other time as counsel may agree.

DATED this 28th day of April, 2014.

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE


I hereby certify that on the 28th day of April, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Nez Perce County Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED

2014 MAY 2 PM 4 32

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty O. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. CR2014-0003285

RESPONSE TO REQUEST FOR
DISCOVERY

TO THE ABOVE-NAMED DEFENDANT AND COUNSEL:

COMES NOW, the State in the above-entitled matter, and submits the following Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney, or the prosecuting attorney's agent have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

3. Defendant's prior criminal record, if any, has been disclosed, made available, or is attached hereto as set forth in Exhibit "B."

4. Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the defendant have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial is set forth in Exhibit "A." Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution

witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed, made available, or are attached hereto as set forth in Exhibit "A."

7. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed, made available, or are attached hereto as set forth in Exhibit "B."


8. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed, made available, or are attached hereto as set forth in Exhibit "B." In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and Brady v. Maryland, 373 U.S. 83 (1963).

9. Wherever this Response indicates that certain evidence or materials have been disclosed, made available, or are attached hereto as set forth in Exhibit "B," such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the defendant. Furthermore, any items which are listed in Exhibit "B" but are not specifically provided, or which are referred to in documents which are listed in Exhibit "B," are available for inspection upon appointment with the Prosecuting Attorney's Office.

10. The State reserves the right to supplement any and all sections of this response if and when more information becomes available.

11. The State objects to requests by the defendant for anything not addressed above on the grounds that such requests are outside the scope AND/OR are irrelevant under I.C.R. 16.

DATED this 2nd day of May 2014.


SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY was

- (1) 1 hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 2nd day of May 2014.


ERIN D. LEAVITT
Senior Legal Assistant

EXHIBIT "A"
LIST OF WITNESSES

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. NAME: KENNETH YOUNT
ADDRESS: Idaho State Police
2700 N&S Highway
Lewiston, Idaho 83501
PHONE: (208) 799-5151

2. NAME: CHRIS REESE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

3. NAME: DAVID WESCHE
ADDRESS: Idaho State Police
2700 N&S Highway
Lewiston, Idaho 83501
PHONE: (208) 799-5151

4. NAME: BRIAN H. BONDS
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street
Lewiston, Idaho 83501
PHONE: (208) 799-3132

5. NAME: JEFFREY D. KALTENBAUGH
ADDRESS: Nez Perce County Sheriff's Office
1150 Wall Street
Lewiston, Idaho 83501
PHONE: (208) 799-3131

EXHIBIT "B"
LIST OF REPORTS

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. A copy of any audios and/or videos are available by providing blank CDs or DVDs to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.
2. Idaho State Police Trafficking in Heroin Report consisting of eleven (11) pages. (1-11)
3. Detailed History for Police Event consisting of three (3) pages. (12-14)
4. Affidavit of Probable Cause Warrantless Arrest Under I.C.R. 5 consisting of six (6) pages. (15-20)
5. Affidavit of Sergeant Ken Yount Supporting Initial Determination of Probable Cause Pursuant to I.C.R 5(c) consisting of nine (9) pages. (21-29)
6. Initial Determination of Probable Cause After Arrest Without Warrant consisting of one (1) page. (30)
7. Report to Nez Perce County Sheriff Concerning Reason for Arrest consisting of one (1) page. (31)
8. Idaho State Police Uniform Citations consisting of two (2) pages. (32-33)
9. Idaho State Police Evidence/Property Receipt consisting of two (2) pages. (34-35)
10. Copy of Identification and Cards from Brian Neal consisting of one (1) page. (36)
11. 2014 Form W-2G consisting of one (1) page. (37)
12. Handwritten notes consisting of two (2) pages. (38-39)
13. Idaho State Police Report prepared by Vern Grotjohn consisting of one (1) page. (40)
14. Copy of money seized consisting of two (2) pages. (41-42)
15. Deposit Ticket consisting of one (1) page. (43)

16. Email correspondence between Vern Grotjohn and Susan Poe consisting of one (1) page. (44)
17. Prelog Submission Form consisting of one (1) page. (45)
18. Idaho State Police Forensic Services Evidence Submission/Receipt Form consisting of one (1) page. (46)
19. Nez Perce County Sheriff LAW Incident Table consisting of one (1) page. (47)
20. Nez Perce County Sheriff's Department Narrative prepared by Brian Bonds consisting of two (2) pages. (48-49)
21. Nez Perce County Sheriff's Department Supplemental Narrative prepared by Jared Kaltenbaugh consisting of one (1) page. (50)
22. Lewiston Police Department LAW Incident Table consisting of one (1) page. (51)
23. Lewiston Police Department Narrative prepared by Chris Reese consisting of two (2) pages. (52-53)
24. Lewiston Police Department Narcotic Dog Application Log consisting of one (1) page. (54)
25. Rotation Request consisting of one (1) page. (55)
26. Idaho State Police Towed Vehicle Inventory/Notice consisting of one (1) page. (56)
27. Criminal History consisting of fifteen (15) pages. (57-71)
28. Two (2) DVDs containing the video from Sergeant Yount's patrol vehicle and the Watchguard video from Officer Reese's patrol vehicle.

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED
2014 MAY 7 PM 12 00

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. CR2014-0003285

**FIRST SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

COMES NOW, SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney,
for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in
the case herein, makes the following first supplemental disclosure compliance
pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional
reports.

DATED this 6th day of May 2014.



SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) 4 hand delivered, or
- (2) hand delivered via court basket, or
- (3) sent via facsimile, or
- (4) mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 17th day of May 2014.


ERIN D. LEAVITT
Senior Legal Assistant

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. A copy of any audios and/or video are available by providing blank CDs or DVDs to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.
2. Idaho State Police Trafficking in Heroin Report consisting of eleven (11) pages. (1-11)
3. Detailed History for Police Event consisting of three (3) pages. (12-14)
4. Affidavit of Probable Cause Warrantless Arrest Under I.C.R. 5 consisting of six (6) pages. (15-20)
5. Affidavit of Sergeant Ken Yount Supporting Initial Determination of Probable Cause Pursuant to I.C.R. 5(c) consisting of nine (9) pages. (21-29)
6. Initial Determination of Probable Cause After Arrest Without Warrant consisting of one (1) page. (30)
7. Report to Nez Perce County Sheriff Concerning Reason for Arrest consisting of one (1) page. (31)
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9. Idaho State Police Evidence/Property Receipt consisting of two (2) pages. (34-35)
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14. Copy of money seized consisting of two (2) pages. (41-42)
15. Deposit Ticket consisting of one (1) page. (43)

16. Email correspondence between Vern Grotjohn and Susan Poe consisting of one (1) page. (44)
17. Prelog Submission Form consisting of one (1) page. (45)
18. Idaho State Police Forensic Services Evidence Submission/Receipt Form consisting of one (1) page. (46)
19. Nez Perce County Sheriff LAW Incident Table consisting of one (1) page. (47)
20. Nez Perce County Sheriff's Department Narrative prepared by Brian Bonds consisting of two (2) pages. (48-49)
21. Nez Perce County Sheriff's Department Supplemental Narrative prepared by Jared Kaltenbaugh consisting of one (1) page. (50)
22. Lewiston Police Department LAW Incident Table consisting of one (1) page. (51)
23. Lewiston Police Department Narrative prepared by Chris Reese consisting of two (2) pages. (52-53)
24. Lewiston Police Department Narcotic Dog Application Log consisting of one (1) page. (54)
25. Rotation Request consisting of one (1) page. (55)
26. Idaho State Police Towed Vehicle Inventory/Notice consisting of one (1) page. (56)
27. Criminal History consisting of fifteen (15) pages. (57-71)
28. Two (2) DVDs containing the video from Sergeant Yount's patrol vehicle and the Watchguard video from Officer Reese's patrol vehicle.
29. **One (1) CD containing thirty-four (34) photographs.**

SECOND JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF NEZ PERCE
1230 MAIN ST.
LEWISTON, IDAHO 83501

CASE TITLE: **State of Idaho vs. Brian E Neal**

HEARING TYPE: Preliminary Hearing

PLF ATTY: Sandra K. Dickerson

DEF ATTY: Kwate Law Office PD 2014

Wednesday, 07 May, 2014

) JUDGE: Kernick
) CLERK: Givens
) Magistrate Courtroom #
) CASE #: **CR-2014-0003285**
) TIME: _____

BE IN KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

013130 Start

Def present with / without counsel

☐ Def not in Custody

☐ Def in Custody

Dickerson / Smith / Coleman present for State

State / Def requests continuance of Prelim

1 week

review Discovery

☒ Court Orders Prelim continued to: 05-14-14 at 1:30 p.m.

☐ Def waives Prelim – Court binds Def over to District Court

☐ Case set for District Court Arraignment on _____ at _____ Assigned to: _____

☐ Stipulation and Motion to Continue Prelim has been filed.

☐ Def is being considered for:

Mental Health Court / DUI Court / Family Reunification Court

☐ Def previously waived right to speedy prelim

☒ Def waives right to speedy prelim

for 1 week:

☒ Defense addresses Court regarding bond

Req. Reduction to \$10,000.00 OR OR

II objects to reduction/OR due to FTA'S. on w/ Parole no permission to be out of State

Cl leaves bond as is.

013500 End

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

Brian Neal

Defendant,

CASE NO. CR-14-3285

- ☐ NOTICE OF PRELIMINARY
CONFERENCE
☒ NOTICE OF PRELIMINARY
HEARING
☐ NOTICE OF SENTENCING
☐ NOTICE OF HEARING ON

NOTICE IS HEREBY GIVEN TO the above-named Defendant that the following hearing
has been set in your case at which you are to appear in the Courtroom of the Nez Perce County
Courthouse, as indicated below:

- ☐ PRELIMINARY CONFERENCE to begin at _____, __.m., on the
_____ day of _____, 20____.
- ☒ PRELIMINARY HEARING to begin at 1:30 p.m., on the
14 day of May, 2014.
- ☐ SENTENCING to begin at _____, __.m. on the _____ day of
_____, 20____.
- ☐ HEARING to begin at _____, __.m. on the _____ day of
_____, 20____.

YOU ARE HEREBY NOTIFIED THAT IF YOU DO NOT APPEAR IN COURT AT SAID
TIME AND PLACE, ANY BOND POSTED MAY BE FORFEITED BY THE COURT AND A
WARRANT MAY BE ISSUED FOR YOUR ARREST WITHOUT FURTHER NOTICE.

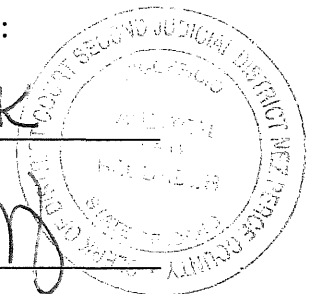
DATED this 7 day of May, 2014.

BY ORDER OF:

- ☒ Copy to Prosecuting Attorney
☒ Copy handed to Defendant
☐ Copy mailed to Defendant
☒ Copy mailed/handed/placed in
basket to Defendant's Attorney
Kurtelaw

Kerrick
Judge

Cunning
Clerk



DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED

2014 MAY 8 PM 4 09

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. CR2014-0003285


**SECOND SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

COMES NOW, SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney,
for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in
the case herein, makes the following second supplemental disclosure compliance
pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional
persons who may be called by the State as witnesses at a trial, none of whom are
known by the undersigned to have any prior felony convictions, unless otherwise
indicated. The State will continue to provide names of any witnesses as they
become available.

2. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 8th day of May 2014.


SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing SECOND SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) 1 hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 8th day of May 2014.


ERIN D. LEAVITT
Senior Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. NAME: KENNETH YOUNT
 ADDRESS: Idaho State Police
 2700 N&S Highway
 Lewiston, Idaho 83501
 PHONE: (208) 799-5151

2. **NAME: ANNE M. NORD (EXPERT WITNESS)**
 ADDRESS: Idaho State Police Forensic Services
 615 West Wilbur, Suite B
 Coeur D'Alene, Idaho 83815
 PHONE: (208) 209-8700

ANTICIPATED TESTIMONY: Anne Nord, is a Forensic Scientist with the Idaho State Police Forensic Services and will testify to her observations, findings and expert opinion as a result of performing the testing on the controlled substances in this case.

3. NAME: CHRIS REESE
 ADDRESS: Lewiston Police Department
 1224 "F" Street
 Lewiston, Idaho 83501
 PHONE: (208) 746-0171

4. NAME: DAVID WESCHE
 ADDRESS: Idaho State Police
 2700 N&S Highway
 Lewiston, Idaho 83501
 PHONE: (208) 799-5151

5. NAME: BRIAN H. BONDS
 ADDRESS: Nez Perce County Sheriff's Department
 1150 Wall Street
 Lewiston, Idaho 83501
 PHONE: (208) 799-3132

6. NAME: JEFFREY D. KALTENBAUGH
ADDRESS: Nez Perce County Sheriff's Office
1150 Wall Street
Lewiston, Idaho 83501
PHONE: (208) 799-3131

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. A copy of any audios and/or video are available by providing blank CDs or DVDs to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.
2. Idaho State Police Trafficking in Heroin Report consisting of eleven (11) pages. (1-11)
3. Detailed History for Police Event consisting of three (3) pages. (12-14)
4. Affidavit of Probable Cause Warrantless Arrest Under I.C.R. 5 consisting of six (6) pages. (15-20)
5. Affidavit of Sergeant Ken Yount Supporting Initial Determination of Probable Cause Pursuant to I.C.R. 5(c) consisting of nine (9) pages. (21-29)
6. Initial Determination of Probable Cause After Arrest Without Warrant consisting of one (1) page. (30)
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8. Idaho State Police Uniform Citations consisting of two (2) pages. (32-33)
9. Idaho State Police Evidence/Property Receipt consisting of two (2) pages. (34-35)
10. Copy of Identification and Cards from Brian Neal consisting of one (1) page. (36)
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12. Handwritten notes consisting of two (2) pages. (38-39)
13. Idaho State Police Report prepared by Vern Grotjohn consisting of one (1) page. (40)
14. Copy of money seized consisting of two (2) pages. (41-42)
15. Deposit Ticket consisting of one (1) page. (43)

16. Email correspondence between Vern Grotjohn and Susan Poe consisting of one (1) page. (44)
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25. Rotation Request consisting of one (1) page. (55)
26. Idaho State Police Towed Vehicle Inventory/Notice consisting of one (1) page. (56)
27. Criminal History consisting of fifteen (15) pages. (57-71)
28. Two (2) DVDs containing the video from Sergeant Yount's patrol vehicle and the Watchguard video from Officer Reese's patrol vehicle.
29. One (1) CD containing thirty-four (34) photographs.
30. **Idaho State Police Forensic Services Forensic Controlled Substance Analysis Report consisting of two (2) pages. (72-73)**
31. **Controlled Substance Analysis Notes consisting of five (5) pages. (74-78)**

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

PRELIMINARY HEARING MINUTES

CR-2014-0003285

State of Idaho vs. Brian E Neal

Hearing type: Preliminary Hearing

Hearing date: 5/14/2014

Time: 2:04 pm

Judge: Greg K. Kalbfleisch

Courtroom: 2

Minutes Clerk: Cole

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

020633

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Def present ☒ with / ☐ without counsel

April Smith --- present for State

☒ Case set for District Court Arraignment 5/21/14 at 9AM Assigned to: Judge Brudie

Preliminary Hearing held, Proceedings as follows:

020705 Mr. Hurn - move to exclude witnesses. No witnesses in the courtroom

020714 State calls Trooper Ken Yount; sworn in by clerk. Re: employment. Re: duties
and training. patrol sergeant.

4/24/14 around midnight :

Traffic stop at DynaMart. Saw a vehicle. Black Pontiac Bonneville. Conducting
stationary patrol. Observed vehicle at 12:40AM. Drove east bound. Had dark
window tint. It has been traveling east on 128. Fail to signal. Continued on Hwy
12. Made an abrupt lane change near Jack in the Box. Initiated a traffic stop at
Jack in the Box. Window tint, failing to signal, and failing to display continuous
signal prior to turning.

021209 identified driver with WA driver's license.

021224 Trooper Young identify defendant in the courtroom.

Re: observations made during traffic stop.

Sweaty – it was 45 degrees outside. Anxiety.

The insurance was expired. He was in town to visit his son. Lives in Pasco, WA.

Defendant wore a T-Shirt with a marijuana leaf on it.

021555 other observations made during the stop.

Suspected defendant may be impaired based upon DRE training.

021831 asked defendant about contents in his vehicle.

Trooper Yount believed the defendant was concealing something illegal. Intended to write him a citation for failure to carry current liability insurance.

Defendant declined Trooper Yount's request to search his vehicle. Based upon what Trooper Yount observed, he believed defendant was concealing something illegal.

Made observations in response to that conversation. Requested defendant to exit vehicle and had another Trooper respond to assist. Also requested LPD K9.

Narcotics canine.

022200 requested backup and K9 unit around 12:47AM.

Back up arrived at 12:52AM. Recontacted defendant re: anxiety condition.

Asked dispatch for criminal history check. Received from dispatch – he was on active probation in Washington. Realize it was a different address. And followed up re: probation status.

Prepared tint meter.

Ofc. Reese arrived on scene at 1:07AM. Spoke briefly with Ofc. Reese. Applied tint meter to confirm tint violation. Front passenger door tint. 17%. Legal limit is 35%. Moved to rear passenger door – it measure 16%. Legal limit is 20%
Back window is required 35%. It was 26%.

Ofc. Reese deployed K9 at 1:11AM. K9 alerted to drug odor. Defendant responded that the vehicle may have drug odor from previous owner of the vehicle.

022908 Ofc. Reese and Trooper Yount began search of the vehicle. Found digital scale that had white crystal residue in the center consol. Believed it to be

methamphetamine. Grey and black cellphone and another phone that looked identical. One was in the center consol and another in the cupholder.

Ofc. Reese found a tin measuring cup in the lower pocket of driver's door that had black color residue. 3 hypothermic needles in the floor area. Placed in a plastic toothbrush container. No substance left inside of it.

023105 trunk of vehicle – backpack. 1 used hypothermic needle. 1 unused needle.

Backpack – he claimed the backpack was his property.

Laptop computer and notebook in backpack.

Contained school related notes. Last page of notebook. Notes were names or initial. There was numbers next to the name. significance – notes were a drug ledger.

023323 notepad in passenger area from a hotel. Similar notes written on it. Multiple letters and numbers written to it. Defendant told Trooper Yount it was from fantasy football.

023506 defendant stated it had been years since he used methamphetamine. Requested defendant to perform SFST – saw signs but did not conclude he was impaired.

023628 re: asked him about scale. He did claim ownership of the cellphones. Placed him under arrest 1:53AM. Placed him under arrest for possession of drug paraphernalia. Completed a search on his person. Found small piece of cotton and cottonswab. Found a wallet. Large amount of cash. \$1,677. Mirandized him and had conversation during transportation to jail. He admitted he used methamphetamine. He stated he injected it in his muscles and all over his body.

024102 defendant made a comment about methamphetamine being cheap in the Tri-Cities.

024131 asked defendant re: scale. He responded that if he purchased, he wouldn't be ripped off.

Arrived at jail prior to 3AM. Requested a full body search.

024257 Cpl. Bonds returned to booking area. Black sock in his underwear. Plastic bag with black tar like substance. White crystal substance in another bag. Four yellow pills identified as hydrocodone. Secured those items in evidence locker.

Performed a field test. weighed the substance and sent to Lab.

024445 State's Exhibit 2 – ISP forensic report related to this case. State moves to admit State's Exhibit 2

024550 Mr. Hurn - no objection

024554 Court – admit State's Exhibit 2 –
Item 1 – heroin – 6.9 grams. Additional information – 95% accurate they are in that weight range.
Item 2 – methamphetamine.

024736 State's Exhibit 1A-1G handed to Trooper Yount.
Re: Pictures of items that was seized

024819 State moves to admit 1A- 1G

024826 Mr. Hurn – view original exhibits - no objection
Court - 1A – 1G admitted.

024947 Mr. Hurn – cross examination
Observed the vehicle at DynaMart, no one in the vehicle.
Was at the DynaMart for about 10 minutes for prior traffic stop.

025155 re: DRE training.

025256 did not smell odor of alcohol or marijuana. No longer certified as DRE.
When first initiated the stop, did not pull him over because he believed he was impaired.
12:53 am wrote failure to provide current liability insurance. Possession of drug paraphernalia. And possession of hydros.
Stop occurred at 12:41AM. Called backup at 12:47AM.

025646 Ofc. Reese had to get ready. Began talking to defendant at 1:07. Deployed canine at 1:11. Had 2 conversations with defendant, spoke with dispatch and issued citation.

025822 paraphernalia – scale with white crystal, and multiple hypothermic needles; and black tin.
Definition of paraphernalia – does not necessary have to do with consumption.
Field kits on substance. Scale was not tested – tin measuring cup, hypothermic needles were not tested.

030047 explanation for having those needles. He said it was his aunt's needles. Stated his aunt is diabetic. Maybe.
 Money was in his wallet. He stated he won that at the Casino. Found a receipt for \$1,200. Won it 8 days prior.
 Field sobriety test occurred after the search occurred. 5 minutes after deployment, did search of vehicle.
 It prerecords back 15 seconds. Video did not capture the first traffic violation.
 Pay O sheet. 1D – phone number 1-800.
 1F– upper right hand corner 6/10/14 at 3PM. Top middle. 1-800 number different from 1D.

030855 fantasy football league.

030954 re: conversation with defendant on the way to the jail. Re: Use of methamphetamine -

031132 Deputy Bond emptied the sock in front of Trooper Yount. 3 baggies. Normal sandwich bags.

031227 re: do not believe it was packaged for personal use because of the amount.
 Controlled buy = typically 1/2 gram or 1 gram for personal use.

031607 no redirect. Trooper Yount steps down.

031625 Court – excuses Trooper Yount

031615 State calls Cpl. Brian Bonds; sworn in by clerk. Re: employment. Corporal.
 Supervise graveyard shifts. Re: 4/24/14. Assisted in booking defendant. Sgt. Yount – prebooking prior to entering booking area. Sgt Yount requested a strip search.
 Dressing 1 area. Move to window area. Advised Mr. Neal re: procedure with strip search. Removed black underwear. There was a black sock. He stated he did not know what it was. That concluded the search. Emptied the contents of the black sock. 3 baggies found inside. 4 yellow pills – logged into pill identifier. 2nd baggie – black liquidy resin type substance. 3rd bag - hard, solid, rock like substance.
 Could possibly be methamphetamine. Turned evidence over to Sgt. Yount.

032316 Mr. Hurn – cross examination.
 Emptied room with shower and toilet. Dressing 1 room was emptied. Another officer also witnessed the search.

032447 Cpl Bonds steps down and is excuse
032456 State rests.
State - No argument – submits
032504 Mr. Hurn presents argument.
Re: timeline of stop. Trooper Yount extended that search unreasonable long to allow Ofc. Reese to respond.
Believed he was under the influence. The field sobriety test occurred after the search occurred. Client's right has been constitutionally violated.
032758 State responds. He began filling out ticket, spoke with dispatch, and waiting for backup. It is not an unreasonable delay. State asks Court to bind defendant over on the two charges.
032850 Court - if there are suppressible issues – can do it in District Court unless it is very clear. Cannot find that in this case.
032915 Court – reviews Sgt. Yount's testimony. Based upon Sgt Yount's observations. Called a backup officer to assist.
033512 Court bind defendant over on count II.
033522 based upon totality of evidence, bind defendant over on Count I.
Set arraignment 5/21 at 9AM in front of Judge Brudie.
033606 recess

Exhibit Summary

Case: CR-2014-0003285

State of Idaho vs. Brian E Neal

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	State's Exhibit 1A - Picture of items contained in black sock - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
2	State's Exhibit 1B - Picture of scale and metal measuring cup - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
3	State's Exhibit 1C - Picture of notebook found in backpack - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
4	State's Exhibit 1D - Picture of writing in the notebook found in backpack - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
5	State's Exhibit 1E - Picture of writing on Red Lion notepad - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
6	State's Exhibit 1F - Second Picture of writing on Red Lion notepad- Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
7	State's Exhibit 1G - Picture of cash found in defendant's wallet - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		
8	State's Exhibit 2 - ISP Forensic Controlled Substance Analysis Report - Admitted 5/14/14	Admitted			
		Assigned to:	[none] April Smith		

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce

1230 Main St.
Lewiston, Idaho 83501

FILED
2014 MAY 14 PM 4 37

STATE OF IDAHO,

Plaintiff,

vs.

Brian E Neal,

Defendant.

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY)
)
)

Case No: CR-2014-0003285

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Arraignment
Judge:

Wednesday, May 21, 2014 09:00 AM
Jeff M. Brudie

at the Nez Perce County Courthouse in Lewiston, Idaho.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Wednesday, May 14, 2014.

Defendant: Brian E Neal
3613 W Agate St
Pasco, WA 99301

Mailed_____ Hand Delivered___x___scanned to jail

Private Counsel: Kwate Law Office PD 2014
1502 G St.
Lewiston, ID 83501

Mailed_____ Hand Delivered___x___

Prosecutor: Sandra K. Dickerson

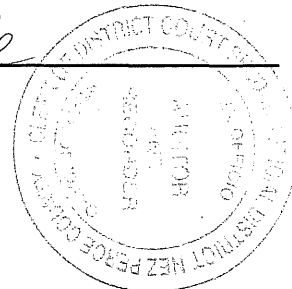
Mailed_____ Hand Delivered___x___

Dated: Wednesday, May 14, 2014

Patty O. Weeks
Clerk Of The District Court

By:

M Cole
Deputy Clerk
DOC22 7/96



FILED

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CLERK OF THE DIST. COURT.

STATE OF IDAHO,

Plaintiff,

v.

BRIAN E. NEAL,

Defendant.

DEPUTY

CASE NO. CR14-3285

ORDER BINDING OVER

The undersigned Magistrate having **HEARD** the Preliminary hearing in the above-entitled matter on the 14th day of May, 2014, and it appearing to me that the offense set forth in the Complaint theretofore filed herein has been committed, and there is sufficient cause to believe the above-named defendant guilty thereof.

I ORDER that said defendant be held to answer the same, and said defendant is hereby bound over to the District Court for trial on the charge of: COUNT I: TRAFFICKING IN HEROIN, I.C. § 37-2732B(a)(6)(A), a felony; COUNT II: POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, I.C. § 37-2732(a)(1)(A), a felony.

DATED this 15th day of May, 2014.

Magistrate

This case has been assigned to: Jeff M. Brudie, District Judge

ORDER BINDING OVER

FILED

2014 MAY 15 PM 4 17

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

PATTY O. WEEKS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-03245
)	
Plaintiff,)	
)	
vs.	)	APPLICATION FOR TRANSCRIPT
	)	OF PRELIMINARY HEARING
Brian E. Neal,)	
)	
Defendant.)	
)	

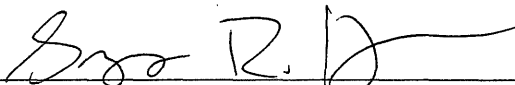
COMES NOW, Gregory R. Hurn of Kwate Law Offices, PLLC, attorney for the above-named defendant, Brian E. Neal, and respectfully shows the Court as follows:

1. That petitioner was appointed on the 24th day of April, 2014, as attorney for the above-named defendant.
2. That a transcript of the preliminary hearing is necessary for trial preparation.
3. That said defendant is indigent and without funds or other resources to pay for the said transcript.

WHEREFORE, petitioner prays that an order be made for the preparation of the said transcript of the preliminary hearing held on May 14, 2014.

DATED this 15th day of May, 2014.

KWATE LAW OFFICES, PLLC
Attorneys for Defendant

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE

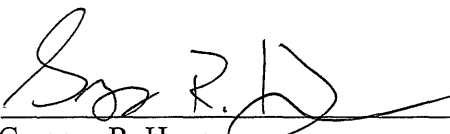
I hereby certify that on the 15th day of May, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Sandra K. Dickerson
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED
2014 MAY 19 AM 11 54
PATTY O. WEEKS
CLERK OF THE DIST. COURT.
DEPUTY
James

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,
D.O.B.: 07/27/1980,
S.S.N.: XXX-XX-3710,

Defendant.

CASE NO. CR2014-0003285

INFORMATION

SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that BRIAN E. NEAL is accused by this Information of the following crime(s):


COUNT I
TRAFFICKING IN HEROIN, I.C. § 37-2732B(a)(6)(A), a felony.

That the Defendant, BRIAN E. NEAL, on or about the 24th day of April 2014, in the County of Nez Perce, State of Idaho, did knowingly possess two (2) grams or more of Heroin, a Schedule I(c) controlled substance, or any salt, isomer, salt of an isomer thereof, or of any mixture or substance containing a detectable amount of any such substance.

COUNT II
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO
DELIVER, I.C. § 37-2732(a)(1)(A), a felony

That the Defendant, BRIAN E. NEAL, on or about the 24th day of April, 2014 in the County of Nez Perce, State of Idaho, did unlawfully possess a controlled substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance, with the intent to deliver the aforementioned controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



SANDRA K. DICKERSON

Chief Deputy Prosecuting Attorney

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian E Neal

Hearing type: Arraignment

Hearing date: 5/21/2014

Time: 9:07 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Justin Coleman

90715 Def present for arraignment. Crt reviews file and charges.

Mr. Hurn relays Def will enter not guilty plea.

Crt addresses Def.

90836 Def pleads not guilty.

Crt sets jury trial on 9/15 at 9:00. Any pt mtn are to be filed by 8/1 with responsive briefs by 8/15. All pt mtns will be heard on 8/20 at 11:00 with final pt cont on 9/3 at 11:00.

Crt has signed order for prelim hearing transcript.

A handwritten signature in black ink, appearing to be 'JMS' or similar, located on the right side of the page.

FILED

2014 MAY 21 PM 1 31

PATTY O. WILSON
CLERK OF THE DIST. COURT

Dr. [Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-03285
)	
Plaintiff,)	
	)	ORDER TO PREPARE
vs.	)	TRANSCRIPT OF
	)	PRELIMINARY HEARING
Brian E. Neal,)	
)	
Defendant.)	

The Court having read and passed on the Application for Transcript of Preliminary Hearing
and being fully advised in the premises hereof,

IT IS HEREBY ORDERED THAT a transcript be prepared of said preliminary hearing.

DATED this 19 day of May, 2014.

[Signature]

Judge

ORDER TO PREPARE
TRANSCRIPT OF
PRELIMINARY HEARING

ORIGINAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of May, 2014, I caused a true and correct copy of the foregoing to be delivered to the following:

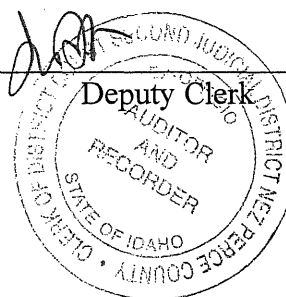
Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
(Court basket)

Sandra K. Dickerson
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501
(Court basket)

Court Reporter
Nez Perce County Court
Post Office Box 896
Lewiston, Idaho 83501
(Court basket)

Patty O. Weeks,
Clerk of the District Court

By _____



TRANSCRIPT ASSIGNED TO
☐ CARLTON
☒ TOWLER

DATE 5-21-14

ORDER TO PREPARE
TRANSCRIPT OF
PRELIMINARY HEARING

2014 MAY 22 PM 1 09

[Handwritten signature]

STATE OF IDAHO,

Plaintiff,

V.

BRIAN NEAL,

Defendant.

CASE NO. CR 14-3285

ORDER SETTING JURY TRIAL AND SCHEDULING

The above-entitled case is hereby scheduled as follows:

Jury Trial shall commence on SEPTEMBER 15, 2014, at the hour of 9:00 a.m.;

All pre-trial motions shall be filed along with supporting briefs on or before AUGUST 1, 2014;

Responding Briefs shall be filed on or before AUGUST 15, 2014;

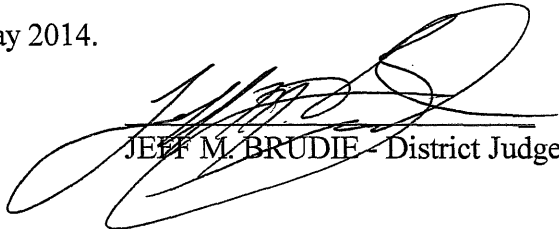
All pre-trial motions shall be heard at the hour of 11:00 a.m. on AUGUST 20, 2014. If no motions are filed, there will be no hearing on this date.

Final pre-trial conference shall be held on SEPTEMBER 3, 2014, at 11:00 a.m. All plea bargaining must be completed by this date and time. Proposed jury instructions are to be submitted at least five

ORDER SETTING JURY TRIAL AND SCHEDULING

(5) days prior to the scheduled trial date. The Court uses the following instructions from ICJI and it is not necessary for counsel to submit them: 103, 104, 105, 106, 201, 202, 204, 205, 206, 207, 208, and 301.

Dated this 22 day of May 2014.


JEFF M. BRUDIE - District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SETTING JURY TRIAL AND SCHEDULING was

 hand delivered via court basket, or

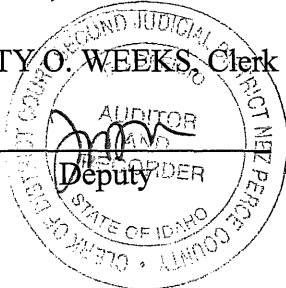
 mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 22 day of May 2014, to:

Kwate Law Office
1502 G Street
Lewiston, ID 83501

Sandra Dickerson
P.O. Box 1267
Lewiston, ID 83501

PATTY O. WEEKS, Clerk

By



ORDER SETTING JURY TRIAL
AND SCHEDULING

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED
2014 MAY 23 PM 12 13

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. CR2014-0003285

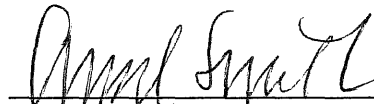
**THIRD SUPPLEMENTAL RESPONSE
TO REQUEST FOR DISCOVERY**

COMES NOW, SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney, for Nez Perce County, Idaho, and pursuant to Defendant's Request for Discovery in the case herein, makes the following third supplemental disclosure compliance pursuant to Idaho Criminal Rules, Rule 16.

1. That attached hereto is AMENDED EXHIBIT "A" which sets forth additional persons who may be called by the State as witnesses at a trial, none of whom are known by the undersigned to have any prior felony convictions, unless otherwise indicated. The State will continue to provide names of any witnesses as they become available.

2. That attached hereto is AMENDED EXHIBIT "B" which sets forth additional reports.

DATED this 22 day of May 2014.



SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

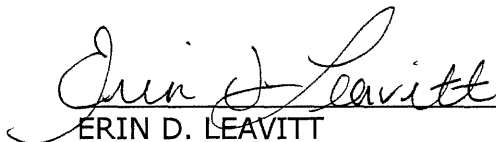
I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing THIRD SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY was

- (1) u hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 23rd day of May 2014.



ERIN D. LEAVITT
Senior Legal Assistant

AMENDED EXHIBIT "A"
AMENDED LIST OF WITNESSES

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. NAME: KENNETH YOUNT
ADDRESS: Idaho State Police
2700 N&S Highway
Lewiston, Idaho 83501
PHONE: (208) 799-5151

2. NAME: ANNE M. NORD (EXPERT WITNESS)
ADDRESS: Idaho State Police Forensic Services
615 West Wilbur, Suite B
Coeur D'Alene, Idaho 83815
PHONE: (208) 209-8700

ANTICIPATED TESTIMONY: Anne Nord, is a Forensic Scientist with the Idaho State Police Forensic Services and will testify to her observations, findings and expert opinion as a result of performing the testing on the controlled substances in this case.

3. NAME: CHRIS REESE
ADDRESS: Lewiston Police Department
1224 "F" Street
Lewiston, Idaho 83501
PHONE: (208) 746-0171

4. NAME: DAVID WESCHE
ADDRESS: Idaho State Police
2700 N&S Highway
Lewiston, Idaho 83501
PHONE: (208) 799-5151

5. NAME: BRIAN H. BONDS
ADDRESS: Nez Perce County Sheriff's Department
1150 Wall Street
Lewiston, Idaho 83501
PHONE: (208) 799-3132

6. NAME: JEFFREY D. KALTENBAUGH
 ADDRESS: Nez Perce County Sheriff's Office
 1150 Wall Street
 Lewiston, Idaho 83501
 PHONE: (208) 799-3131

7. NAME: **ERIC KJORNESS**
 ADDRESS: **Lewiston Police Department**
 1224 "F" Street
 Lewiston, Idaho 83501
 PHONE: **(208) 746-0171**

AMENDED EXHIBIT "B"
AMENDED LIST OF REPORTS

STATE OF IDAHO vs. BRIAN E. NEAL
NEZ PERCE COUNTY CASE NO. CR2014-0003285

1. A copy of any audios and/or video are available by providing blank CDs or DVDs to the Nez Perce County Prosecuting Attorney's Office and by making prior arrangements during normal working hours.
2. Idaho State Police Trafficking in Heroin Report consisting of eleven (11) pages. (1-11)
3. Detailed History for Police Event consisting of three (3) pages. (12-14)
4. Affidavit of Probable Cause Warrantless Arrest Under I.C.R. 5 consisting of six (6) pages. (15-20)
5. Affidavit of Sergeant Ken Yount Supporting Initial Determination of Probable Cause Pursuant to I.C.R. 5(c) consisting of nine (9) pages. (21-29)
6. Initial Determination of Probable Cause After Arrest Without Warrant consisting of one (1) page. (30)
7. Report to Nez Perce County Sheriff Concerning Reason for Arrest consisting of one (1) page. (31)
8. Idaho State Police Uniform Citations consisting of two (2) pages. (32-33)
9. Idaho State Police Evidence/Property Receipt consisting of two (2) pages. (34-35)
10. Copy of Identification and Cards from Brian Neal consisting of one (1) page. (36)
11. 2014 Form W-2G consisting of one (1) page. (37)
12. Handwritten notes consisting of two (2) pages. (38-39)
13. Idaho State Police Report prepared by Vern Grotjohn consisting of one (1) page. (40)
14. Copy of money seized consisting of two (2) pages. (41-42)
15. Deposit Ticket consisting of one (1) page. (43)

16. Email correspondence between Vern Grotjohn and Susan Poe consisting of one (1) page. (44)
17. Prelog Submission Form consisting of one (1) page. (45)
18. Idaho State Police Forensic Services Evidence Submission/Receipt Form consisting of one (1) page. (46)
19. Nez Perce County Sheriff LAW Incident Table consisting of one (1) page. (47)
20. Nez Perce County Sheriff's Department Narrative prepared by Brian Bonds consisting of two (2) pages. (48-49)
21. Nez Perce County Sheriff's Department Supplemental Narrative prepared by Jared Kaltenbaugh consisting of one (1) page. (50)
22. Lewiston Police Department LAW Incident Table consisting of one (1) page. (51)
23. Lewiston Police Department Narrative prepared by Chris Reese consisting of two (2) pages. (52-53)
24. Lewiston Police Department Narcotic Dog Application Log consisting of one (1) page. (54)
25. Rotation Request consisting of one (1) page. (55)
26. Idaho State Police Towed Vehicle Inventory/Notice consisting of one (1) page. (56)
27. Criminal History consisting of fifteen (15) pages. (57-71)
28. Two (2) DVDs containing the video from Sergeant Yount's patrol vehicle and the Watchguard video from Officer Reese's patrol vehicle.
29. One (1) CD containing thirty-four (34) photographs.
30. Idaho State Police Forensic Services Forensic Controlled Substance Analysis Report consisting of two (2) pages. (72-73)
31. Controlled Substance Analysis Notes consisting of five (5) pages. (74-78)
32. **Idaho State Police Search Warrant report consisting of six (6) pages. (79-84)**
33. **Lewiston Police Department LAW Incident Report consisting of one (1) page. (85)**

34. **Lewiston Police Department Narrative prepared by Eric Kjorness consisting of one (1) page. (86)**
35. **One (1) CD containing the reports from the cell phones.**

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant

FILED
2014 JUN 5 PM 4 04
PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-03245
)	
Plaintiff,)	
)	
vs.	)	MOTION TO WITHDRAW
)	
Brian E. Neal,)	
)	
Defendant.)	

*Shovel K
CR 14-03285*

COMES NOW Gregory R. Hurn of Kwate Law Offices, PLLC, court appointed attorney of record for the defendant in the above-entitled matter, and hereby moves the court for an order allowing him to withdraw as counsel for said defendant.

This motion is made and based upon the grounds that there is a complete breakdown in communication between client and attorney and is based upon the affidavit submitted in support herewith.

DATED this 5th day of June, 2014.

KWATE LAW OFFICES, PLLC

By *Greg R. Hurn*
Gregory R. Hurn

CERTIFICATE OF SERVICE

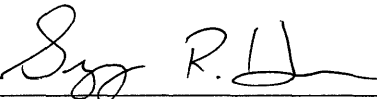
I hereby certify that on the 5th day of June, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

FILED

2014 JUN 5 PM 4 04

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-03245
)	
Plaintiff,)	
)	
vs.	)	AFFIDAVIT IN SUPPORT OF
	)	MOTION TO WITHDRAW
Brian E. Neal,)	
)	
Defendant.)	
)	

GREGORY R. HURN, being first duly sworn, on his oath deposes and says that:

1. Kwate Law Offices, PLLC was court appointed on April 24, 2014, to represent the defendant in the above-entitled matter.
2. I also represent Jamie Aubrey in Nez Pere County Case No. CR 2012-07394.
3. Mr. Neal has represented to me that he shares a child in common with Ms. Aubrey.
4. As a result of me continuing to represent Ms. Aubrey, Mr. Neal will not discuss his case with me because his perception of a conflict of interest. This perception has led to a complete breakdown in communication between Brian Neal and myself.

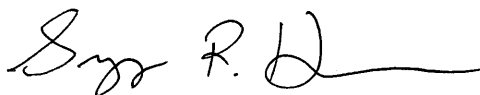
AFFIDAVIT IN SUPPORT OF
MOTION TO WITHDRAW

5. I have attempted to explain to Mr. Neal that no conflict of interest exists in my representation of Ms. Aubrey's criminal case and Mr. Neal's criminal case.

6. The breakdown in communication Mr. Neal and myself significantly interferes with my legal representation.

FURTHER YOUR AFFIANT SAITH NAUGHT.

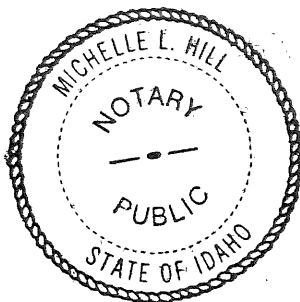
DATED this 5th day of June, 2014.



Gregory R. Hurn

STATE OF IDAHO)
 : ss.
County of Nez Perce)

SUBSCRIBED and SWORN to me before this 5th day of June, 2014.



Notary Public for Idaho.
Residing at Lewiston, therein
My commission expires: June 23, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2014, a true and correct copy
of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By Greg R. Hurn
Gregory R. Hurn

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Motion for Leave to Withdraw as Attorney

Hearing date: 6/18/2014

Time: 11:29 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

112958 Def present for mtn to withdraw. Crt reviews motion and potential conflict of interest.

113143 Mr. Hurn presents statement.

Crt q re Ms. Aubrey.

Mr. Hurn relays she is on her way back from Rider program.

Crt q re being a witness.

Mr. Hurn no.

State no.

113337 State presents statement.

113710 Crt q Def re issue.

Def presents statement.

Crt q Def.

Def responds.

Crt advises of conflict of interest issue.

Def relays ineffective assistant of counsel.

Crt q Def re that issue.

Def relays family is trying to get attorney from Tri Cities.

Crt relays Def can do that if he wishes but he has applied for public defender and Crt is comfortable with Mr. Hurn being his attorney. Crt advises Def of rights and job of Mr. Hurn. Crt relays Mr. Hurn is going to continue to represent him and he needs to cooperate with him.

Def relays he is not being told the truth.

Crt relays Mr. Hurn will explain issues to him.

Def requests bond review.

Mr. Hurn relays Def requests bond.

114120 Crt reviews bond at time of prelim was set at \$50,000. State requested \$150,000 Mag set it at \$50,000.

114248 Mr. Hurn requests significant reduction, Def is a resident of Tri Cities, he will continue to reside here while this charge is pending, he would be living with his fiancée and does have a child here in the area.

Crt q Def re either probation or parole.

Def on probation in WA, in the Tri Cities, he has a PO there. He has been on probation for 9 months has another one year left. He will have to go to Benton Co.

State received new information from WA that Def is on active supervision, he did not have permission to leave the state, he is classified for high risk offender and they were putting out an all- state warrant for him, there is currently a warrant from Benton Co outstanding.

Crt will take bond under advisement. Crt will enter a written order if decision is made.

A handwritten signature in black ink, appearing to be 'MB' with a stylized flourish.

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED

2014 AUG 1 AM 11:53

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,
D.O.B.: 07/27/1980,
S.S.N.: XXX-XX-3710,

Defendant.

CASE NO. CR2014-0003285

AMENDED INFORMATION

SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that BRIAN E. NEAL is accused by this **AMENDED** Information of the following crime(s):

COUNT I

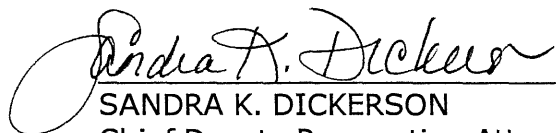
TRAFFICKING IN HEROIN, I.C. § 37-2732B(a)(6)(A), a felony.

That the Defendant, BRIAN E. NEAL, on or about the 24th day of April 2014, in the County of Nez Perce, State of Idaho, did knowingly possess two (2) grams or more, **but less than (7) grams** of Heroin, a Schedule I(c) controlled substance, or any salt, isomer, salt of an isomer thereof, or of any mixture or substance containing a detectable amount of any such substance.

COUNT II
POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO
DELIVER, I.C. § 37-2732(a)(1)(A), a felony

That the Defendant, BRIAN E. NEAL, on or about the 24th day of April, 2014 in the County of Nez Perce, State of Idaho, did unlawfully possess a controlled substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance, with the intent to deliver the aforementioned controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar #8753

FILED
2014 AUG 1 PM 4 10

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03248 *85*

MOTION TO SUPPRESS EVIDENCE

COMES NOW the Defendant, Brian E. Neal, by and through his attorney of record, Gregory R. Hurn of Kwate Law Offices, PLLC, and hereby moves the court for an order suppressing any and all evidence, physical and testimonial, illegally obtained from the warrantless search of Defendant's automobile that lacked probable cause and unlawful detention which occurred on or about April 24, 2014, in the City of Lewiston, Nez Perce County, State of Idaho.

Specifically, the Defendant moves the court to suppress the following items and/or statements:

1. Any and all physical evidence seized from Defendant's automobile that was illegally obtained from the warrantless search of Defendant's automobile and the unlawful detention of Defendant that occurred on April 24, 2014.


2. Any and all other property, papers, information or testimony pertaining to the Defendant illegally obtained as fruit of the warrantless search and unlawful detention of Defendant that occurred on April 24th, 2014.

This motion is made pursuant to Idaho Criminal Rule 12 (b) (3), for the reason that the above mentioned evidence was obtained in violation of Idaho Constitution Article I §17, the Fourth Amendment to the United States Constitution, and the Fourteenth Amendment to the United State Constitution and is based upon the testimony to be adduced at the hearing on this motion and upon the pleadings and papers on file herein.

A brief in support of this motion will be filed at a later date.

DATED this 1st day of August, 2014.

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE

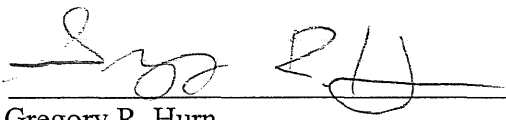
I hereby certify that on the 1st day of August, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Sandra K. Dickerson
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hum

FILED

2014 AUG 14 PM 3 57

PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

Gregory R. Hum
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03245 *3285*

STIPULATION TO VACATE
JURY TRIAL AND SET FOR
STATUS CONFERENCE

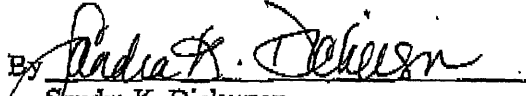
COME NOW the State of Idaho, by and through its attorney of record herein, Sandra K. Dickerson, Nez Perce County Chief Deputy Prosecuting Attorney, and the defendant, Brian E. Neal, by and through his attorney of record herein, Gregory R. Hum of Kwate Law Offices, PLLC, and hereby stipulate and agree to vacate the Jury Trial currently set for September 15, 2014, at the hour of 9:00 a.m., and set for a Status Conference on September 3, 2014.

This stipulation is entered into based upon the fact that the attorney for the defendant needs additional time to prepare for the Jury Trial.

STIPULATION TO VACATE
JURY TRIAL AND SET
FOR STATUS CONFERENCE

ORIGINAL

STATE OF IDAHO
Attorney for Plaintiff

By 
Sandra K. Dickerson

KWATE LAW OFFICES, PLLC
Attorney for Defendant

By 
Gregory R. Hurn

STIPULATION TO VACATE
JURY TRIAL AND SET
FOR STATUS CONFERENCE

FILED

2014 AUG 15 AM 11 02

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03245 ~~3285~~

ORDER VACATING
JURY TRIAL AND SETTING
STATUS CONFERENCE

The Court having read and passed on the Stipulation to Vacate Jury Trial and set for Status Conference and being fully advised in the premises hereof,

IT IS HEREBY ORDERED THAT the Jury Trial in this matter be vacated and a Status Conference be set for the 3 day of Sept, 2014, at the hour of 11:00 a.m.

DATED this 15 day of August, 2014.

Judge

ORDER VACATING
JURY TRIAL AND SETTING
STATUS CONFERENCE

ORIGINAL

CERTIFICATE OF SERVICE


I **HEREBY CERTIFY** that on this 15th day of August, 2014, I caused a true and correct copy of the foregoing to be delivered to the following:

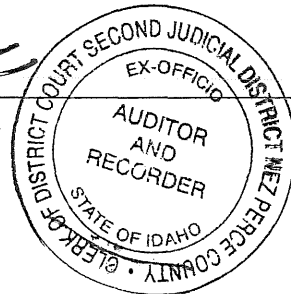
Sandra K. Dickerson
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501
(Court basket)

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
(Court basket)

Patty O. Weeks,
Clerk of the District Court

By


Deputy Clerk



ORDER VACATING
JURY TRIAL AND SETTING
STATUS CONFERENCE

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Status Conference

Hearing date: 9/3/2014

Time: 12:06 pm

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

120635 Def present for status conf. Crt reviews file.

Mr. Hurn requests jury trial setting again and has filed a motion that needs heard. He will be submitting a brief to the State today.

Crt sets jury trial on 11/17 at 9:00, final pt conf 11/5 at 11:00.

Crt sets sched conf for motion hearing on 10/1 at 9:00. State is to respond by then to motion filed by defense.

A handwritten signature in black ink, appearing to be 'JMB', is located on the right side of the page.

FILED

2014 SEP 8 AM 10 40

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

v.

BRIAN NEAL,

Defendant.

CASE NO. CR 14-3285

AMENDED ORDER SETTING
JURY TRIAL

The above-entitled case is hereby re-scheduled as follows:

Jury Trial shall commence on NOVEMBER 17, 2014, at the hour of 9:00 a.m.;

Final pre-trial conference shall be held on NOVEMBER 5, 2014, at 11:00 a.m. All plea bargaining must be completed by this date and time. Proposed jury instructions are to be submitted at least five (5) days prior to the scheduled trial date. The Court uses the following instructions from ICJI and it is not necessary for counsel to submit them: 103, 104, 105, 106, 201, 202, 204, 205, 206, 207, 208, and 301.

Dated this 8 day of September 2014.


JEFF M. BRUDIE - District Judge

AMENDED ORDER SETTING
JURY TRIAL

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing AMENDED ORDER SETTING JURY TRIAL was

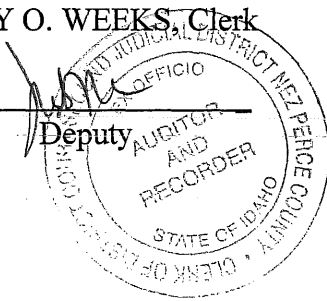
 / hand delivered via court basket by the undersigned at Lewiston, Idaho, this 8 day of September 2014, to:

Kwate Law Office
1502 G Street
Lewiston, ID 83501

Sandra Dickerson
P.O. Box 1267
Lewiston, ID 83501

PATTY O. WEEKS, Clerk

By



Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar #8753

Attorney for Defendant

FILED

2014 SEP 8 PM 4 34

PATTY O. WEEKS
CLERK OF THE DIST. COURT.

[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03245-85

BRIEF IN SUPPORT OF MOTION
TO SUPPRESS EVIDENCE

COMES NOW the Defendant, Brian E. Neal, by and through his attorney of record, Gregory R. Hurn of Kwate Law Offices, PLLC, and hereby submits this brief in support of his Motion to Suppress Evidence and argues as follow:

SUMMARY

This case is an example of overly aggressive police tactics employed by a police officer, to engage in a fishing expedition which ultimately resulted in a prolonged seizure of the Defendant and the search of his vehicle. The officer's pre-seizure contact with the Defendant, Brian Neal (hereafter Neal), was without any resemblance of criminal activity to justify the seizure. Nevertheless, the

BRIEF IN SUPPORT OF MOTION
TO SUPPRESS EVIDENCE

officer used pure magic to transform Neal's innocuous acts and comments to justify detaining him for twenty-five (25) minutes while waiting for a drug detection canine and for searching his vehicle.

The initial contact resulted from a traffic stop for Neal allegedly failing to signal, not signaling for the required period of time prior to changing lanes, and having window tint darker than allowed by Idaho Code. Idaho State Police Sergeant Ken Yount (hereafter Yount) questioned Neal on a variety of topics. Within four (4) minutes of initial contact, Neal denies Yount's request for consent to search Neal's vehicle. Yount then told Neal that he was going to request a canine officer and his dog respond to the scene, thereby detaining Neal pending the canine officer's arrival. Twenty-one (21) minutes later, a canine officer arrived. During that period of time between Neal's detainment and the canine officer's arrival, Yount did not inspect the vehicle's window tint, issue a citation for the alleged traffic violations.

Although the detention did result in the finding of paraphernalia in the vehicle and heroin on Neal's person, the end result did not justify the constitutional violation nor convert the officer's fishing expedition into any reasonable suspicion. The end result was that Yount's search of Neal's vehicle was founded upon the illegal seizure and unlawfully prolonged detention of Mr. Neal. As such, any and all evidence obtained by the State is tainted by an unlawful search and seizure and therefore must be suppressed under the exclusionary rule.

FACTS

On April 24th, 2014 at approximately 12:41 a.m., Officer Yount of the Idaho State stopped a black 2005 Pontiac Bonneville in the parking lot of Jack in the Box at 1903 G Street, Lewiston, Idaho. (See Video at 12:41:27). Yount stopped the vehicle for three alleged traffic violations; (1) failing to signal when merging onto US Highway 112 from State Highway 128, (2) failing to display

a continuous signal prior to changing lanes on US Highway 12, (3) and having vehicle window tint in darker than legally allowed. (Tr. P. 8, L. 24 - P. 9, L. 3; see also Video at 12:42:16).

Upon request, Neal provided his driver's license and identified himself to Yount. (See Video at 12:42:16). Neal explained to Yount that he was in the area visiting his teenage son and was out late to get something to eat. (See Video at 12:46:02 and 12:46:12) Yount asked Neal why he appeared be sweating and nervous to wit Neal explained that he was wearing a sweatshirt and hat which was making him hot and sweaty which coupled with his having not taken his prescription medication for an anxiety disorder was making him sweat. (Tr. P. 10, L. 5 - 18; see also Video at 12:45:40). At 12:46 a.m., Yount asked Neal if he would consent to the search of his vehicle, to wit Neal denied consent. (Tr. P. 13, L. 9 - 14, see also Video at 12:46:28). Yount then informed Neal that he was going to get an off duty canine officer to the scene to deploy a narcotic detecting canine around Neal's vehicle because he felt that something illegal was in the vehicle. (Tr. P. 13, L. 210 - 14; see also Video at 12:46:46). At 12:47 a.m. Yount then detained Neal by ordering Neal to step out of the vehicle while dispatch and a canine officer were contacted. (See Video at 12:47:30).

Yount then contacted dispatch at 12:50 a.m. to request information on Neal., request a second officer to assist him, and to have a canine officer contact him. (See Video at 12:50:13). Yount made contact with Lewiston Police Canine Officer Reese (hereafter Reese), via cell phone, at 12:54 a.m.. Yount then told Reese he was going to write Neal a ticket and then asked Reese what his e.t.a. (estimated time of arrival) was. (See Video at 12:55:02). Reese replied he had just woke and was getting up. (See Video at 12:55:07). At 1:07:20 a.m. Reese arrives on scene of the traffic stop. (Tr. P. 18, L. 1-3; see also Video at 01:07:20).

Twenty-seven minutes after initial contact is made with Neal, Yount used a tint meter to examine the vehicle's window tint. (See Video at 01:08:43). Following the examination of the tint, Reese deployed the Canine around Neal's vehicle at 1:11 a.m. (See Video at 1:11:54). Reese told Yount that the canine alerted to the car. (See Video at 01:12:28). As a result, Yount and Reese began the search of the vehicle, found evidence of drug paraphernalia, and arrested Neal. (See Video at 01:53:00).

ARGUMENT

THE EVIDENCE OBTAINED FROM THE SEARCH OF THE DEFENDANT'S VEHICLE SHOULD BE SUPPRESSED BECAUSE IT WAS OBTAINED AS A DIRECT RESULT OF THE UNLAWFUL SEIZURE AND DETENTION OF MR. NEAL.

Yount's search of Neal's vehicle was the direct result of a violation of Neal's federal and state constitutional rights against unreasonable seizures and searches when he detained Neal's person and vehicle without a reasonable suspicion of criminal activity and unreasonably prolonged that detention in order for an off duty canine officer to arrive. As a result, under the exclusionary rule, all evidence directly or indirectly obtained as a result of the constitutional violations must be excluded as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441, 455-56 (1963); *State v. Zuniga*, 143 Idaho 431, 434, 146 P.3d 697, 700 (Ct. App. 2006).

A. The Applicable Law:

The Fourth Amendment of the United States Constitution and Article 1 Section 17 of the Idaho Constitution, guarantees people to be secure from unreasonable searches and seizures. *State v. Whitely*, 124 Idaho 261, 264, 858 P.2d 800 (1993). The Fourth Amendment is violated when an

individual is unlawfully seized or detained. Florida v. Bostick, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed. 2d 389(1991). A seizure that implicates the Fourth Amendment occurs when an officer, by physical force or show of authority, restrains a citizen's liberty, however briefly. Terry v. Ohio, 392 U.S. 1, 20, n. 16, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968). State v. Wixom, 130 Idaho 752, 754. A seizure may take the form of either an arrest or an investigative detention. State v. Stewart, 145 Idaho 641, 644, 181 P.3d 1249, 1252 (2008) A law enforcement officer may conduct an investigatory detention only when he or she has "particularized and objective" suspicion that criminal activity is afoot. United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct 690, 66 L.Ed.2d 621 (1981). An officer cannot base the detention on an "inchoate and unparticularized suspicion or hunch." Terry, 392 U.S. at 27. An investigative detention, "must be carefully tailored to its underlying justification." U.S. v. Chavez Valenzuela, 268 F.3d 719, 724 (9th Cir. 2001). "A detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop" and an individual "may not be detained even momentarily without reasonable, objective grounds for doing so." State v. Gutierrez, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct. Ap 2002) quoting, Florida v. Royer, 460 U.S. 491, 498, 103 S. Ct 1319, 1324 (1983); U.S. v. Salzano, 158 F.3d 1107, 1111 (10th Cir. 1998). An officer must initially restrict the questions he asks during a stop to those that are reasonably related to the justification for the stop. Chavez-Valenzuela, 268 F.3d at 724. The officer may expand the scope only if he notices particularized, objective factors arousing his suspicion. Id. "Conversely, an inchoate and unparticularized suspicion or 'hunch' cannot withstand scrutiny under the Fourth Amendment." United States v. Sokolow, 290 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

Searches or detentions conducted without a warrant are presumptively unreasonable. State v. Stewart, 145 Idaho 641, 644, 181 P.3d 1249, 1252 (2008); Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S.Ct 2022, 2031-32, 29 L.Ed.2d 564, 575-76 (1971). At all times, the Government bears burden of proving that the search and seizure were lawful. United States v. Hoffman, 607 F.2d 280, 282 (9th Cir. 1979); State v. Sevy, 129 Idaho 613, 615, 930 P.2d 1358, 1360 (1997); State v. DeWitt, 145 Idaho 709, 712, 184 P.3d 215, 218 (Ct. App. 2008).

B. The Officer Did Not Have Reasonable Articulate Suspicion to Detain Neal.

Yount initially stopped Neal for allegedly failing to signal when merging into traffic, improperly signaling during a lane change, and having window tint in excess of the legal limit. From the moment Yount stopped Neal until he was detained, Yount had gathered nothing that would support a reasonable articulable suspicion of any criminal activity based upon his observations of Neal and his physical presentment. The subsequent seizure and detention of Neal violated the Fourth Amendment since it was not supported by any reasonable suspicion of criminal activity but, instead, was based entirely upon an unsupported hunch. Terry v. Ohio, 392 U.S. at 21.

Prior to the detention of Neal, the interaction between Yount and Neal lasted just five minutes. During that five minutes, Yount questioned him on a variety of topics including where he was coming from, why he appeared to be sweating, why he appeared nervous, and what was emblazoned on the t-shirt Neal was wearing. Yount then asked Neal if he would consent to a search of his vehicle after a citation was issued. Neal declined to grant consent and as a result Yount then ordered Neal to exit the vehicle at 12:47 a.m. and thereby detained him rather than going back to his patrol car to issue a citation for traffic violations.

The point in time when the initial detention occurs is critical as “[t]he justification for the detention must exist when the detention takes place” and the only relevant facts in determining whether the officer possessed reasonable articulable suspicion that criminal activity was afoot are those that are known to the officer when the detention starts. State v. Zuniga, 143 Idaho 431, 435-436, 146 P.3d 697, 701-02 (Ct. App. 2006). The determination as whether or not reasonable suspicion existed is not based upon the officer’s subjective beliefs, but, rather, it is judged upon an objective standard. State v. Hobson, 95 Idaho 920, 523 P.2d 523 (1974). In discussing the proper standard of review, the Court in Hobson stated,

The information underlying the initiation of the investigative stop must possess specificity and some indicia of reliability. In this regard the officer’s conduct must be judged against an ‘Objective standard’: would the facts available to the officer, **at the moment of the seizure or search** warrant a man of reasonable caution in the belief that the action taken was appropriate. Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches. And simple ‘good faith on the part of the officer is not enough’. If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be secure in their persons, house, papers and effects, only in the discretion of the police.

Hobson, 95 Idaho at 925. The reasonableness of an investigative detention is determined by applying the objective standard in a two-part inquiry. First, the Court must determine whether the detention was justified at its inception. Second, the Court must determine whether the officer’s actions during the detention were reasonably related in scope to the circumstances which justified the interference in the first place. Terry v. Ohio, 392 U.S. at 20; U.S. v. Wood, 106 F.3d at 945.

In the case at bar, nothing occurred between 12:42:16 a.m. and 12:47:30 a.m. that justified the seizure of Neal, his prolonged detention for an off duty canine officer to arrive, and the search of his vehicle. Yount stated his reasons for stopping the vehicle, which were for alleged simple

traffic violations. During the subsequent five minutes before detaining Neal, Yount began fishing with a plethora of questions of Neal. Yount initially questioned Neal about the two traffic violations involving failing to signal and/or signaling improperly. Neal apologized for the violations and explained he purchased the vehicle with the tint already installed believing it to be within the legal limit. Based upon Neal's innocuous answers, Yount then changed the direction of his questions to Neal's nervous appearance. Again Neal provided innocuous answers to his appearance, primarily that he was hot and sweaty because he was in his car, wearing a sweater and hat coupled with his anxiety disorder for which he was prescribed medication that he had ran out of three (3) days prior. Based upon those innocuous answers, Yount then questions Neal about subjects that have nothing to do with either the reason for the stop or the innocuous answers given. Specifically whether there was any illegal items, paraphernalia, or firearms in the vehicle. The complete exchange between Yount and Neal from the initial contact with Neal until Yount detained Neal is contained in the video from 12:42:16 a.m. to 12:47:30 a.m. as well as a transcript of that conversation, Exhibit A.

1. Officer Yount's Continued Investigative Questioning Impermissibly Expanded the Scope and Duration of the Stop in Violation of Neal's Fourth Amendment rights.

During a stop, a police officer is allowed to ask questions related in scope to the justification for his initial contact. U.S. v. Murillo, 255 F.3d 1169, 1174 (9th Cir. 2001). In order to broaden the scope of questions the officer must articulate suspicious factors that are particularized and objective. Id. This rule of law goes hand in hand with the mandate that any detention must be temporary and last no longer than is necessary to effectuate the purposes of the stop and that an individual may not be detained even momentarily without reasonable objective grounds for doing so. State v. Gutierrez, 137 Idaho 647, 51 P.3d 461 (Ct. App. 2002).

In the case at bar, Officer Yount launched into questions that were entirely unrelated in scope to the minor traffic violations for which Neal was stopped. Yount did not possess any reasonable and objective suspicion to warrant the expanded scope of questioning into what is clearly a criminal investigation for narcotic activity.

Yount's question was similar in nature to the officer's questioning in Gutierrez which was deemed to exceed the basis of the stop and resulted in the suppression of evidence obtained in a vehicle search. In Gutierrez, the officer stopped the defendants for speeding. Id. 137 Idaho at 649. After giving a warning for speeding the officer asked three questions; namely, whether there was any alcohol, controlled substances or weapons in the vehicle. Id. The questioning expanded the stop for only sixty to ninety seconds. The officer claimed that the driver was unduly nervous, averted his eyes and made overly dramatic gestures when speaking with the officer and which the officer attributed to a sign of deception. Id. The officer also believed the passengers were acting nervously. Id. The officer then asked for and received permission to search the vehicle. The search revealed marijuana and paraphernalia. Id.

The defendants, in Gutierrez moved to suppress the evidence based upon the claim that the officer unlawfully prolonged the detention by asking questions on matters that were unrelated to the purpose of the stop without reasonable suspicion. The Idaho Court of Appeals agreed, ruling that "Although the duration of this questioning was relatively short, lasting sixty to ninety seconds, it was nonetheless an unwarranted intrusion upon the vehicle occupants' privacy and liberty. Heeding the Supreme Court's caution that an individual "may not be detained even momentarily without reasonable, objective grounds for doing so." Id. at 652. (Internal citations omitted.) As a result, the Court determined that the driver and passengers were subjected to an illegal detention at the time the

driver gave consent to a search and, thus, the consent was tainted by the illegality and ineffective.

Id. As a consequence, the evidence was suppressed.

During Yount's questioning, he asked Neal, if there was any reason a narcotic detecting canine would alert on the vehicle (Video 12:46:32). This question is nearly identical to the question posed by the officer in People v. Leigh, 792 N.E. 2d 809 (Ill. App. 2003), which resulted in the suppression of evidence due to the question creating an unlawful expansion of the scope of a stop. In Leigh, the defendant was stopped for not having a rear license plate illumination light. The officer asked the defendant "if there was anything in the truck that would cause a police dog to alert were he to call a canine unit to the scene." Id. at 810. As the result of the questioning, the defendant notified the officer of the presence of a gun in the vehicle which ultimately resulted in the defendant's arrest on weapons charges. Id. at 811. As in Gutierrez, the evidence in Leigh was suppressed because it was seized as the result of an impermissible expansion of the scope of the stop. The Court in Leigh determined that asking whether anything at all in his truck would cause a police dog to alert was an implicit threat to use a canine unit and increased the confrontational nature of the stop and expanded the scope of the investigation well beyond the purpose of the stop. The Court further determined that the questioning amounted to a fishing expedition in the absence of any basis to suspect a crime had been or was being committed. Leigh at 812-813. Yount's actions were more egregious than the officer in Leigh since he did not rely upon implicit threats of using a canine unit, but, instead, he expressly proclaimed that he was going to deploy a canine unit.

Unlike the officer in Gutierrez, Yount asked far more than just three questions that had no relation whatsoever to the minor traffic violations. Similar to Gutierrez, Yount asked if there were any weapons or firearms in Neal's vehicle (Video 12:44:43) and whether there was anything illegal

in the car (Video 12:44:46). Further, like in Leigh, he asked if there was any reason a drug detection dog would indicate there was anything in the vehicle. (Video 12:46:32).

Officer Yount's questioning was not justified by any objective, reasonable suspicion of any criminal activity. Thus, as in Gutierrez, this Court should find that Yount's questioning impermissibly expanded the scope and duration of the stop in violation of Neal's Fourth Amendment rights.

2. Officer Yount Did Not Possess Any Reasonable Suspicion of Drug Trafficking Such That the Prolonged Detention of Neal and His Vehicle to Await a Drug Detection Dog Was a Violation of Neal's Fourth Amendment Rights Against Unreasonable Searches and Seizures.

Yount detained the Defendant and his vehicle to await a drug detection canine based upon a suspicion that something illegal was in Neal's vehicle that he "shouldn't have". (Video 12:46:38). Yount's questioning Neal about drugs and detaining him while waiting for a drug detection canine violated the Fourth Amendment because Yount did not have any particularized or objectively reasonable suspicion that Neal was engaged in any illegal drug activity. Instead, the evidence clearly establishes that Yount was engaged in a fishing expedition that was based entirely upon an unsubstantiated hunch.

The fact that his hunch proved accurate, however, is irrelevant to the analysis. As stated by the 11th Circuit Court in U.S. v. Perkins, 348 F.3d 965 (11th Cir. 2003), "the fact that [the officer's] hunch ultimately turned out correct ...is irrelevant for the purposes of the Fourth Amendment. To hold otherwise would open the door to patently illegal searches by government officials, who would attempt to justify the legality of their conduct after the fact."

The scope or duration of an investigative detention may be expanded beyond its initial purpose only if the detaining officer at the time of the detention has a particularized and objective basis for suspecting the particular person stopped of criminal activity. Wood, 106 F.3d 942, 946 (1997). Here, Yount claims he possessed reasonable suspicion of illegal drug activity based upon certain factors; namely that Neal was nervous, sweating profusely, and rapidly speaking. Yount's factors in which he bases his suspicions upon included the following:

- (1) How Neal is acting (Video 12:46:32);
- (2) Neal breathing rapidly (Video 12:47:04, see also Tr. P. 12, L. 14 - 16);
- (3) Neal's sweating profusely (Video 12:44:35, see also Tr. P. 12 L. 12 - 13);
- (4) Neal difficulty sitting still (Tr. P. 12, L. 14 - 16).

A review of the video contradicts Yount's subjective version of the events as Neal's nervous appearance is legitimately, logically, and reasonably explained by an anxiety disorder for which Neal had run out of medication to treat it. This nervous behavior fails to provide any particularized and objective suspicion of illegal drug trafficking activity. Yount's rendition of the facts is reminiscent of the officer's interpretation of events in U.S. v. Boyce, 351 F.3d 1102 (11th Cir. 2003). As in the case at bar, the officer in Boyce attempted to justify his suspicion of criminal activity by claiming that the defendant acted nervously and sweated profusely and also claimed that the defendant's nervousness was manifested by "being unusually talkative, moving back and forth as if looking for a place to run". Id. at 1108. The Court of Appeals, however, reviewed the video recording of that stop and found the officer's testimony was an embellishment of the actual facts.

The Court stated,

"The district court clearly erred in finding Boyce was "unusually nervous" because the videotape belies Edwards's testimony as to their behaviors. For example, Edwards testified that he had never seen

anyone sweat so much in his life as Boyce. But, if someone were sweating so profusely, one would expect to see him wipe his brow more than once in the span of twenty minutes. The tape does not show Boyce wiping his brow, even once, until the stop had been on-going for twenty minutes. Further, Boyce's shirt never appeared to be sticking to him and it did to appear to have any sweat stains."

Id. at 1108. A review of the video tape of the contact between Yount and Neal reveals that Yount's claims of nervous behavior to be pure embellishment. It is clear that Yount simply interprets every comment and act of Neal in a manner to manufacture the existence of reasonable suspicion of criminal activity that clearly does not actually exist.

Even if Yount's rendition of Neal's behavior were accurate, the circumstances he identified as justification for detaining Neal have been uniformly rejected by Courts as a reasonable basis to suspect drug activity. The rejection of the criteria is due to the fact that those "circumstances describe a very large category of presumably innocent travelers, who would be subject to virtually random seizures." *Reid v. Georgia*, 448 U.S. 438, 441, 100 S.Ct. 2752, 2754 (1980).

With regard to the acts manifesting nervousness, Idaho Court's have rejected nervousness as a basis to detain an individual. As discussed in *State v. Zuniga*, 143 Idaho 431, 435, 146 P.3d 697, 701 (2006), "[b]ecause it is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity, a person's nervous demeanor during such an encounter is of limited significance in establishing the presence of reasonable suspicion." quoting, *State v. Gibson*, 141 Idaho 277, 285-86, 108 P.3d 424, 432-33 (Ct. App. 2005).

Other Courts discredit nervous demeanor as being a legitimate basis for establishing reasonable suspicion of criminal activity which findings have resulted in the routine suppression of evidence. In *United States v. Chavez-Valenzuela*, 279 F.3d 1062 (9th Cir. 2001), the defendant was

stopped for speeding. During the detention, the officer obtained permission to search the vehicle wherein the officers found six packages containing 4,313 grams of methamphetamine. *Id.* at 722-23. The Ninth Circuit reversed the conviction, finding that the officer's observations of the defendant's nervousness which was identified as the defendant's "entire body was shaking uncontrollably" (*Id.* at 722) and that the defendant was avoiding eye (*Id.*) contact did not provide reasonable suspicion of criminal activity. *Id.* at 724-728.

In *United States v. Urrieta*, 520 F.3d 569 (6th Cir. 2008), the Court of Appeals reversed a trial Court's denial of a motion to suppress and, in doing so, held that claims of nervousness and questionable travel plans or practices did not provide reasonable basis for believing someone is involved in drug activities. In *Urrieta*, the officer stopped the defendant for traffic infractions and then obtained consent to search the vehicle after asking a series of questions while waiting for dispatch's report on the license and registration. *Id.* at 571-72. The search produced three guns which resulted in firearms charges. The search was invalidated after the Appellate Court deemed that the consent to search was tainted by an unlawful detention. *Id.* at 579. More particularly, the Court held that the factors relied upon by the officer to detain the driver and his passengers did not create a reasonable suspicion of criminal activity since the factors "describe a very large category of presumably innocent travelers, who would be subject to virtually random seizures were the Court to conclude that as foundation that could justify a seizure." *Id.* at 576.

The factors relied upon by the officer in *Urrieta*, were that (1) Urrieta was traveling from California (a source state for drugs) to Atlanta; (2) the passengers in the car were nervous; and, (3) that the defendant's travel plans were odd as the value of the vehicle Urrieta was driving exceeded

the value of the vehicle he was towing. In suppressing the evidence, the Court first rejected the notion of travelers coming from California could be the basis for developing reasonable suspicion that a traveler is transporting drugs, stating, “travel between population centers is a relatively weak indicator of illegal activity because there is almost no city in this country that could not be characterized as either a major narcotics distribution center or a city through which drug couriers pass on their way to a major narcotics distribution center.” *Urrieta*, 520 F.3d at 576-77. The Court further stated that, “California is the most populous state in the country, being the home of more than 35 million people. Travel between California and the major population hub of Atlanta, therefore, does not add any significant weight to the deputy’s suspicion of the defendant engaging in transporting drugs.” *Id.* at 577.

Next, the Court in *Urrieta* rejected “nervousness” as a basis for detention, stating,

“[this court has found nervousness inherently *unsuspicious* and has therefore given it very limited or no weight in the reasonable suspicion calculation. *Id.* See also *United States v. Richardson*, 385 F.3d 625, 630-31 (holding that nervousness is ‘an unreliable indicator of illegal activity, especially in the context of a traffic stop,’ because many citizens become nervous when stopped by police ‘even when they have nothing to fear or hide’.

Urrieta, 520 F.3d at 577. Finally, the Court disregarded the officer’s reliance upon what he thought was odd travel plans as such activity does not equate to drug smuggling and can be explained by innocent reasons. *Id.* at 577-78. In reversing the lower court, the Sixth Circuit Court stated,

Under the Fourth Amendment, even the briefest of detentions is too long if the police lack a reasonable suspicion of specific criminal activity. ... **“Although we do not relish the consequence of allowing a person possessing prohibited items to go free, we find even more unpalatable the thought of putting our stamp of approval on the practice of unlawfully extending the detention of traffic violators based on nothing more than an inchoate hunch.”** *Id.* at 579.

In U.S. v. Wood, 106 F.3d 942 (10th Cir. 1997) the defendant was stopped for speeding.

While the defendant was told he was free to go, his vehicle was detained until drug detection dogs arrived and alerted on his vehicle. Id. at 944. A search discovered 1,000 grams of methamphetamine. The search was deemed invalid because the officer lacked a particularized objective basis to prolong the detention. The officer's justification for the search was that Mr. Wood was extremely nervous; his breathing was rapid, his hands trembled as he handed over his driver's license, and he cleared his throat several times. Id. at 944. Additionally, the officer thought it was suspicious that the defendant had taken vacation by airplane and rental vehicle even though he was unemployed. Id.

In rejecting nervousness as a basis for reasonable suspicion, the Court held that "it is certainly not uncommon for most citizens - whether innocent or guilty - to exhibit signs of nervousness when confronted by law enforcement officer." Id. at 948. Moreover, like Yount in the case at bar, the officer in Wood had no prior acquaintance with the defendant which the Court found to be of significance as the trooper was unable to compare his behavior during the stop with his usual behavior. Id. at 948. The Court further rejected the defendant's travel plans which the officer found to be suspicious as being a legitimate basis for detaining a person. The court held,

After stripping away the factors which must be disregarded because they are innocuous, we are left with Mr. Wood's nervousness and his prior narcotics history - both factors which this court has cautioned are only limited significance in determining whether reasonable suspicion existed. **To sanction a finding that the Fourth Amendment permits a seizure based on such a weak foundation would be tantamount to subjecting the traveling public to virtually random seizures, inquisitions to obtain information which could then be used to suggest reasonable suspicion, and arbitrary exercises of police power.** Accordingly, because Trooper Jimerson detained Mr. Wood's car without reasonable suspicion, the evidence of narcotics discovered in his trunk is tainted by the unlawfulness of that detention and must be suppressed.

Id. at 948 (emphasis added).

In U.S. v. Beck, 140 F.3d 1129 (8th Cir. 1998), the Court suppressed evidence due to the fact that the officer did not have reasonable articulable suspicion that Beck's vehicle was carrying contraband. In Beck, the defendant was stopped for a traffic infraction. The stop was extended to allow for a drug dog that alerted for drugs. A search of the vehicle discovered methamphetamine. The government claimed that reasonable suspicion arose from the following circumstances: (1) Beck was driving a rental car which had been rented by an absent third party; (2) the vehicle was traveling from California, a source state; and, (3) the officer disbelieved Beck's explanation for his trip. Id. at 1137.

In ruling that the officer lacked reasonable suspicion of criminal activity to warrant a renewed detention, the Court found the factors the officer based the detention upon to be entirely consistent with innocent travel such that it could not reasonably be said to give rise to suspicion or criminal activity. As with other Courts, it quickly rejected the notion of traveling from California as providing reasonable suspicion of criminal activity, stating,

“we do not think that the enter state of California, the most populous state in the union, can properly be deemed a source of illegal narcotics such that mere residency in that state constitutes a factor supporting reasonable suspicion....Innumerable other Americans travel to that state or through there for pleasure or lawful business. Clearly, the vast number of individuals coming from that state must relegate this factor to a relatively insignificant role.”

Id. at 1137-38.

The Court then rejected the officer's subjective assessment that Beck was nervous during the stop as providing reasonable suspicion of illegal activity. The Court held, “it certainly cannot be deemed unusual for a motorist to exhibit signs of nervousness when confronted by a law enforcement officer.” In rejecting nervousness as a basis for detention, the Court pointed out the

fact that the officer “had never previously met Beck and, therefore, had no measure by which to gauge Beck’s behavior during the traffic stop with his usual demeanor.” *Id.* at 1139.

In *United States v. Tapia*, 912 F.2d 1367 (11th Cir. 1990) the Court held that shaking hands and the absence of luggage, which was inconsistent with the defendants’ story as to his travel plans, did not justify his continued detention. In refusing to find reasonable suspicion, the Court stated, “Neither police officers nor courts should sanction as ‘reasonably suspicious’ a combination of factors that could plausibly describe the behavior of a large portion of the motorists engaged in travel upon our interstate highways.” *Id.* at 1371. See also, *U.S. v. Perkins*, 348 F.3d 965 (2003). (“In this Circuit, we have required more than the innocuous characteristics of nervousness, a habit of repeating questions, and an out-of-state license for giving rise to reasonable suspicion.”)

In *U.S. v. Salzano*, 158 F.3d 1107 (10th Cir. 1998) the defendant was stopped for a traffic violation. Finding Salzano’s purported travel plans suspicious and noticing that his hands were shaking, the officer asked consent to search. When Salzano refused, the officer called for a drug dog team which arrived approximately 27 minutes later. When the drug dog alerted, the officers searched the vehicle and found 494 pounds of marijuana. *Id.* at 1110. The defendant moved to suppress the drugs which motion was denied. That denial was reversed on appeal.

At the suppression hearing, the government relied upon the following factors as support of the reasonableness of the officer’s suspicion that criminal activity was afoot: (1) Mr. Salzano’s uneconomical decision to travel across the country in an expensive motor home at a rental cost of \$3,900 and a fuel cost of \$1,000; (2) the discrepancy between the number of persons stated in the rental agreement and the fact that Mr. Salzano was traveling alone; (3) Mr. Salzano’s visible nervousness while handing the officer rental paper; (4) the smell of evergreen in the vehicle; and,

(5) Mr. Salzano's statement that he had come from California. Id. at 1111. The Court first rejected the officer's suspicions about the travel plans, stating, "the decision to take the time and expense to drive, rather than fly or use some other mode of transportation, cannot support a reasonable suspicion of criminal activity, even when it would seem to make more sense financially to choose an alternative form of transportation and even when the defendant states that he is not currently employed. There is nothing criminal about traveling by car to view scenery." Id. at 1112. The Court also rejected the signs of nervousness and traveling from California as supplying reasonable suspicion of criminal activity. Id. at 1113-1114. The Court found the other enumerated factors as being insufficient basis to detain the defendant.

Following the above cases, it is clear that Yount did not have any particularized objective suspicion of Neal transporting drugs; and, that the factors identified by Officer Yount are nothing more than innocuous behavior that Yount manipulated into an after-the-fact justification for the detention. It is difficult to imagine a scenario more telling of an officer engaged in a fishing expedition and acting on a hunch than the case at bar, as the record is utterly void of anything that can remotely qualify as creating an objective and reasonable suspicion of particularized criminal activity. Officer Yount twisted and manipulated even the most innocent of acts into a suspicion of criminal activity. During the preliminary hearing, Yount explained the "suspicious" behavior to be from the "totality of my observations" to include sweating profusely, tense appearance, leg bouncing, avoided eye contact with Yount, rapid speech, difficulty sitting. (Tr. P. 12, L. 12 - 25; and Tr. P. 13, L. 1 - 6).

All of these actions clearly fall within the United States Supreme Court's category of actions that are entirely innocuous and do not create a reasonable suspicion. See Reid v. Georgia, 448 U.S. at 441. The fact that Yount's hunch proved accurate does not lend weight to the reasonableness of

his suspicion. As pointed out by the Court in United States v. Perkins, 348 F.3d 965 (11th Cir. 2003), “the fact that [the officer’s] hunch ultimately turned out to be correct...is irrelevant for purposes of the Fourth Amendment. To hold otherwise would open the door to patently illegal searches by government officials, who would attempt to justify the legality of their conduct after-the-fact.” Id. at 971. The concern of giving weight to the fact that drugs were actually found in this particular case is summarized by Justice Schwartzman in State v. Zavala, where he stated,

“I have often wondered, both as a trial judge for over twenty-six years and as an appellate judge, just how many times this type of police scenario is played and no drugs are ever found. Of course, we shall *never know*, because the driver is merely allowed to go on his way, relieved that this mini-ordeal is now over without further inconvenience, and not particularly concerned that his constitutional rights have been subtly violated.”

134 Idaho 532, 538-39 (Ct. App. 2000). In this particular instance, Yount’s unlawful tactics did result in finding narcotics, however, the end result does not justify the means and it does not remove the taint of Yount’s unlawful seizure and detention of Neal’s person and his vehicle.

3. Yount Violated Neal’s Fourth Amendment Rights by Unlawfully Prolonging the Detention.

Yount violated Neal’s constitutional rights by unlawfully prolonging the detention. As discussed by the Court in Gutierrez, an investigative detention “must be temporary and last no longer than is necessary to effectuate the purpose of the stop” and that “[a]n individual may not be detained even momentarily without reasonable objective grounds for doing so.” Id., 137 Idaho at 651. In the case at bar, it is readily apparent that Yount intentionally delays issuing a citation to allow time for the canine officer to arrive and search the vehicle. It is further apparent that Yount knows that the canine officer won’t be immediately ready to deploy on the vehicle because Reese was off duty and

had just woke up to answer Yount's call. (See vdeio at 12:55:00.) Twenty-one minutes lapses from the time Yount orders Neal out of his vehicle until the time Reese arrives with his canine. (Video 2:57:27). During this twenty-one minute period of time Yount does not take action to check the vehicle's window tint, perform field sobriety tests, or investigate anything involving the original reason for the traffic stop. Rather Yount's actions continue to be related to an unsupported hunch.

Yount's intentional delay is similar to the officer's conduct in U.S. v. Molina, 626 F. Supp. 2d 1073 (U.S. Dist. Idaho 2009) wherein Judge Lodge determined that while the initial traffic stop was lawful, "it was unreasonably prolonged beyond the time necessary to complete its mission." Id. at 1078. In Molina, the traffic stop lasted over twenty-six minutes. Id. It started with a routine traffic stop for failure to maintain lanes. Id. at 1074. However, one of the officers on scene called for a drug detection dog. Id. The officer testified that he began writing a citation and that he did not complete it before the drug dog had arrived and sniffed the car. Id. The Court found that fact did not make the length of the stop reasonable. Id. at 1077. Moreover, in discussing the government's excuses to justify the twenty minute stop, the Court specifically determined that the officer intentionally delayed the stop to wait for the drug dog. The Court stated, "The encounter between the police officers and Mr. Molina up to the time of the arrest took over twenty minutes. Officer Burgard's testimony was that he was "investigating" the whole time and that he did not delay his activities to allow the K-9 Unit to arrive on scene does not square with the record." Id. at 1078. The Court then concluded that the stop was unreasonably prolonged and, as a result, the Court granted the motion to suppress evidence obtained during the stop and search of the vehicle.

Similar to the record in Molina, the record in the case at bar also demonstrates that Yount intentionally delayed issuing the citation to provide time for the drug dog to arrive. Due to the canine officer being off duty and asleep at the time of the initiation of the traffic stop, Yount delayed

investigating the vehicle's tint, writing citations for any of the alleged traffic violations, nor investigating Neal through field sobriety tests for signs of potential impaired driving. In fact, Yount only investigated both the window tint and potential impairment after Reese had arrived with his canine which was twenty-one minutes after the canine was requested and more than twenty-five minutes after the traffic stop was initiated by Yount.

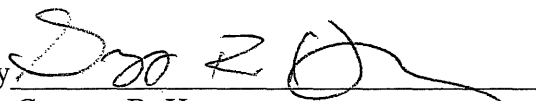
The seizure of the car and Neal was unreasonably prolonged in violation of the Fourth Amendment. As a consequence, the evidence obtained must be suppressed.

CONCLUSION

The record establishes that the search of Neal's vehicle was unlawful as it was the direct result of a seizure and prolonged detention that violated Neal's Fourth Amendment rights. Since the evidence seized was based upon an unlawful detention, it must be suppressed as fruits of the poisonous tree. Accordingly, the Defendant respectfully requests this Court to grant his motion to suppress.

DATED this 8th day of September, 2014.

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

CERTIFICATE OF SERVICE


I hereby certify that on the 8th day of August, 2014, a true and correct copy of the foregoing instrument was:

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KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT,
OF THE STATE OF IDAHO,

IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

FILED
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TERESA DAMMON

PATTY O. WEEKS
CLERK OF THE DIST. COURT.

Case No. CR2014-03285
DEPUTY

COPY

TRANSCRIPT OF PROCEEDINGS

MAY 14, 2014

THE HONORABLE GREG K. KALBFLEISCH, PRESIDING
MAGISTRATE JUDGE

1 A P P E A R A N C E S

2 For the STATE: APRIL SMITH, ESQ.
3 Nez Perce County Prosecuting
4 Attorney's Office
1221 "F" Street
Lewiston, Idaho 83501

5 For the DEFENDANT: GREGORY R. HURN, ESQ.
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I N D E X

1		
2		Page
3	KEN YOUNT	
	Direct Examination by Ms. Smith	5
4	Cross-Examination by Mr. Hurn	34
5	BRIAN BONDS	
	Direct Examination by Ms. Smith	56
6	Cross-Examination by Mr. Hurn	60

E X H I B I T S

8		Mark	Rec'd
9	STATE'S EXHIBIT NOS. 1A-1G	--	34
10	STATE'S EXHIBIT NO. 2	--	31
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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1 WEDNESDAY, MAY 14, 2014 2:01 PM

2

3 PROCEEDINGS

4

5 THE COURT: We're on the record in State of

6 Idaho versus Brian Neal, Case No. CR14-3285. Ms. Smith

7 is here on behalf of the State. Mr. Neal is present,

8 along with his attorney, Mr. Hurn. And this is the time

9 set for a preliminary hearing.

10 And are we ready to proceed, Ms. Smith?

11 MS. SMITH: Yes, Your Honor.

12 THE COURT: Mr. Hurn, are you ready?

13 MR. HURN: Yes, Your Honor.

14 THE COURT: Any preliminary matters,

15 Ms. Smith?

16 MS. SMITH: No, Your Honor.

17 THE COURT: Mr. Hurn?

18 MR. HURN: Witness exclusion, if there are

19 any. But there aren't.

20 THE COURT: I don't -- I don't see anybody,

21 I think, in the courtroom that's a witness.

22 So with that, you can call your first

23 witness, Ms. Smith.

24 MS. SMITH: State calls Ken Yount.

25 THE COURT: Sir, if you'd come forward,

5

1 raise your right hand, be sworn in by the clerk, have a

2 seat in the witness chair, please.

3 KEN YOUNT,

4 a witness of lawful age, having been first duly sworn to

5 tell the truth, the whole truth and nothing but the

6 truth, was thereupon called as a witness on behalf of

7 the State and testified upon his oath as follows:

8 THE COURT: Go ahead and have a seat there.

9 Thank you.

10 DIRECT EXAMINATION

11 BY MS. SMITH:

12 Q. If you could please state your name and spell

13 your last name.

14 A. Ken Yount, Y-O-U-N-T.

15 Q. Are you currently employed?

16 A. Yes.

17 Q. And where are you employed?

18 A. With the Idaho State Police.

19 Q. How long have you been employed with the Idaho

20 State Police?

21 A. Eleven years.

22 Q. And what are your current duties with the Idaho

23 State Police?

24 A. I'm a patrol sergeant.

25 Q. Are you certified in the state of Idaho to be a

6

1 police officer?

2 A. Yes.

3 Q. And what certification do you hold?

4 A. An advanced certificate.

5 Q. Okay. And what type of training have you

6 received?

7 A. In total, over 2500 hours of POST certified

8 training. I attended the Idaho POST patrol academy. I

9 think it was 12 weeks at the time. Thereafter, attended

10 the Idaho State Police advanced training course, ten

11 weeks. Previously assigned as a detective with the

12 Idaho State Police, served for approximately three

13 years, received various narcotics and

14 investigation-related training during that time.

15 Prior to that, I was a trooper for approximately

16 six years, served as a drug recognition expert,

17 extensive training regarding impaired driving, both

18 alcohol and drug impairment.

19 Q. Okay. Were you working as a patrol sergeant on

20 April 24th of this year?

21 A. Yes.

22 Q. What were your duties?

23 A. Patrolling.

24 Q. Okay. And where were you at approximately 12 --

25 or midnight on April 24th?

7

1 A. About midnight, I had initiated a traffic stop

2 that ended up in the parking lot of the Dyna Mart out in

3 north Lewiston.

4 Q. Okay. And after you completed that traffic stop,

5 what did you do?

6 A. As I drove away, I saw a car parked over by

7 the -- the pumps. And it had caught my attention

8 because it had been there unoccupied through the --

9 throughout the duration of that traffic contact. And so

10 I drove by to see if anybody was there. There was no

11 gas pump inserted into the gas tank. And I confirmed it

12 was unoccupied and observed that the windows appeared to

13 be very dark.

14 Q. What kind of car was it?

15 A. It was a black Pontiac Bonneville.

16 Q. Okay. And so what did you do?

17 A. I ended up parking down the street near the

18 intersection of State Highway 128 and U.S. 12 where I

19 was conducting a stationary patrol.

20 Q. Okay. And did you ever observe that vehicle

21 again?

22 A. Yes.

23 Q. When did you observe that vehicle?

24 A. It was about 40 minutes after midnight.

25 Q. And what drew your attention to that vehicle?

1 A. As it drove by eastbound, it appeared to be that
2 same vehicle that had the dark window tint, so I entered
3 the highway behind it to confirm that it was that
4 vehicle with the tint violations.

5 Q. Okay. And what observations did you make?

6 A. As I followed behind it, it merged -- it had been
7 traveling east on 128, and so it merged onto westbound
8 U.S. 12. And that's just north of the Third Avenue
9 North intersection. It failed to display a turn signal
10 when it merged onto U.S. 12.

11 Q. Okay. And so what did you do?

12 A. I continued to follow it. Because of the
13 intersection and Memorial Bridge, I waited to initiate a
14 traffic stop until I found a better location. It
15 continued on Highway 12 toward the downtown portion of
16 Lewiston. And then it made an abrupt lane change just
17 prior to the Jack in the Box parking lot. It signaled
18 for approximately one second before changing from the
19 outside lane to the inside lane.

20 Q. And what did you do?

21 A. I activated the emergency lights and initiated a
22 traffic stop, and we stopped in the parking lot of Jack
23 in the Box.

24 Q. And why did you initiate the traffic stop?

25 A. For the three violations I explained: The window

1 tint, had estimated it was darker than legal; failing to
2 signal when merging, and then failing to display a
3 continuous turn signal prior to the lane change.

4 Q. Okay. And did the vehicle pull over?

5 A. It did.

6 Q. And once the vehicle pulled over, what did you
7 do?

8 A. I contacted the driver at the driver's side and
9 observed he was the only occupant of the vehicle.

10 Q. Were you able to identify the driver?

11 A. Yes.

12 Q. How were you able to identify him?

13 A. He provided a Washington driver's license.

14 Q. And what -- what did the identification identify
15 him as?

16 A. Brian Neal.

17 Q. Do you see Brian Neal in the courtroom today?

18 A. Yes.

19 Q. Could you please point to him and describe what
20 he's wearing?

21 A. Yes. Seated to the right of defense counsel in a
22 black and gray striped shirt.

23 Q. Once you were able to identify him, what
24 observations did you make about him?

25 A. Immediately, I noticed that his -- his face and

1 forehead region was . . . And he -- his -- his left leg
2 was -- was bouncing steadily, and he appeared to have
3 difficulty sitting still in his seat. As we spoke, his
4 speech was quick or rapid.

5 Q. Okay. And what did you do?

6 A. Well, I think we spoke about him -- I asked him
7 if he was sweating, because it was approximately
8 45 degrees outside, and I was wearing a jacket. So the
9 weather was cool, and I asked him if he had -- if he was
10 sweating, and he stated he had -- he was sweating.

11 Q. Did he give any explanation for that?

12 A. Eventually, he did. As we spoke about his
13 anxiety -- initially, he said that he was anxious just
14 being pulled over. And then when I -- I pointed out
15 other observations of his anxiety, he said that he had a
16 medical condition suffering from anxiety. And then he
17 explained that it caused him to talk quickly and to
18 sweat profusely and to exhibit signs of anxiousness.

19 Q. Okay. And so you -- during this time, you got
20 his identification, and you were speaking with him.

21 What did you do next?

22 A. Asked for his vehicle registration and proof of
23 insurance.

24 Q. Was he able to provide that to you?

25 A. He did.

1 Q. Okay. And then what did you do?

2 A. I observed the insurance was expired, continued
3 to talk about his trip. He said that he was in town to
4 visit his son; that he had -- he lived in Pasco,
5 Washington, had been in town for a couple of days.
6 Asked what he was doing out so late if he was in town to
7 visit family, and he said that he was out mobbing
8 around, was his statement.

9 Q. And so what did you do next?

10 A. I asked him -- I noticed on his tee shirt that
11 he -- there was -- the design was what I believed to be
12 a marijuana leaf behind the Space Needle of Seattle.
13 And so I asked him about his shirt and about marijuana.

14 Q. Okay. And then what happened?

15 A. We spoke about that. He said that he didn't use
16 marijuana. He didn't believe it should be illegal, but
17 he -- he didn't -- didn't care either way. I asked him
18 if there was any marijuana in the car. He said no.

19 Q. And during this time while you were speaking with
20 him, did you make any other observations?

21 A. Yes. I'll review my report here real quick.

22 Because -- because of the way that he was -- was
23 behaving in the vehicle, I also suspected that he may be
24 impaired by drugs, based on my previous experience as a
25 DRE, I suspected from a central nervous system stimulant

1 such as methamphetamine or cocaine.

2 Q. And so far, your testimony about the observations
3 you made about him was that it was sweating -- that he
4 was sweating, he had rapid speech and his leg was
5 bouncing. Were there other indicators that you observed
6 as well?

7 A. There were. Let me just look through my report
8 here.

9 Q. Sure. Are you missing a page?

10 A. I think I'm just skipping a little bit.

11 Q. Okay.

12 A. So if you'll bear with me. The observation I
13 made was that he appeared to be sweating profusely. He
14 appeared tense. His leg was bouncing. He avoided eye
15 contact with me, rapid speech, appeared to have
16 difficulty sitting still.

17 I had asked him about the contents of the vehicle
18 as well. When I -- when I asked if everything in the
19 car belonged to him, he stammered as he was responding,
20 and he -- he said, everything. When I asked about
21 weapons or firearms or anything illegal, he was very
22 quick to respond. He stated, absolutely not.

23 Q. And so based on all of this information that you
24 had gathered, what did you do next?

25 A. Based on the totality of my observations, I

1 believed that he was involved in major criminal
2 activity. And I believed that, based on our
3 conversation, that he was concealing something illegal.
4 And so I asked -- I intended to write him a citation for
5 the insurance violation, so I asked him when we finished
6 if he would give me consent to search the vehicle.

7 Q. And were -- had you contacted dispatch at all?

8 A. Not at this time. This is our initial contact.

9 Q. Okay. And so then what did you do?

10 A. Mr. Neal declined to allow me to search his
11 vehicle. And I informed him that based on what I had
12 seen of his behavior, that I believed he was concealing
13 something illegal. And I asked if there was any reason
14 a narcotics detection K-9 would alert to his vehicle.

15 Q. And what did he tell you?

16 A. He said no. And I told him that I intended to
17 request a narcotics detection K-9 respond to the scene.

18 Q. Okay. And did you do that?

19 A. Eventually, I did, yes.

20 Q. Okay.

21 A. I made observations in response to that
22 conversation. When I told him about the -- the
23 narcotics K-9, I observed that his breathing became more
24 rapid, and I attributed that to his ongoing anxiety. I
25 also observed that the -- the wetness of his head and

1 face increased. It appeared that he, again, was
2 profusely sweating from this conversation. I asked
3 him -- I pointed those observations out to him.

4 Q. And what did he tell you?

5 A. He said that it was because I was giving him the
6 third degree. And I explained that I was asking him
7 simple questions, and he responded, I know. And he
8 apologized.

9 Q. Okay. And so what did you do next?

10 A. I returned to my -- I actually, because of his
11 behavior, for my safety, I requested he exit the
12 vehicle. And once he did that, I positioned him in
13 front of my patrol car and returned to my car to request
14 my dispatch have another trooper respond to assist as I
15 intended to evaluate him for drug impairment and also to
16 request the response from Lewiston Police drug detection
17 K-9, which at that time was not on duty.

18 Q. Okay. And so earlier in your testimony, you said
19 that you conducted your traffic stop at approximately
20 12:40?

21 A. I think the actual stop time was 12:41.

22 Q. 12:41 a.m.? And at what time did you request
23 backup and/or dispatch to request a K-9 unit?

24 A. It was approximately 12:47.

25 Q. And did backup arrive?

1 A. Yes.

2 Q. And approximately what time was backup arriving?

3 A. About 12:52.

4 Q. Okay. Now, during this time, you were in your
5 patrol car speaking with dispatch?

6 A. Part of that time, and then part of that time, I
7 was also talking with Mr. Neal.

8 Q. Okay. And so after you spoke with dispatch and
9 requested backup and a K-9 unit respond, then what did
10 you do?

11 A. After that time, I recontacted Mr. Neal, and I
12 wanted to follow up on his statement that he suffered
13 from an anxiety condition. So I wanted to ask him if he
14 was using any medication for that condition. He -- he
15 told me -- I think he had previously said that he -- he
16 used Xanax or Klonopin for that condition. I wanted to
17 confirm whether he used that or -- and I also asked him
18 about any illegal substances. He told me he hadn't used
19 them.

20 Q. That he hadn't used any of his Klonopin?

21 A. I think he told me that it had been about three
22 days since he had used his prescribed medication. And
23 he said he hadn't used any illegal substances.

24 Q. Okay. And so then what did you do?

25 A. I asked -- I asked to see his arms, and I

1 observed that there were scabs, a lot of scabs on his
2 arms that I suspected were old injection sites from the
3 use of a hypodermic needles.

4 Q. And then what did you do?

5 A. I think after that time, ISP Trooper Dave Wesche
6 had arrived to help. And I asked him -- I explained
7 briefly the circumstances of the contact, asked that he
8 stand near Mr. Neal for safety while I completed a
9 citation for the insurance violation.

10 Q. Okay. And was it at that point that you returned
11 to your vehicle?

12 A. Yes.

13 Q. Okay. And what happened once you returned to
14 your vehicle?

15 A. I began writing the insurance citation. Dispatch
16 advised that his driver's status was clear through
17 Washington. And I had asked for a criminal history
18 check as well for prior drug offenses.

19 Q. Okay. And -- and was it also at that time that
20 you were working on the citation?

21 A. Yes.

22 Q. Okay. And so then what happened?

23 A. As part of the information I received from
24 dispatch, they advised that Mr. Neal was on active
25 probation in Washington.

1 Q. Okay. So what did you do with that information?

2 A. I needed to -- as I was completing the citation,
3 I realized that he had given me a different address than
4 what was on his paperwork. So I -- I recontacted him to
5 obtain his current address for the citation, confirmed
6 that he lived in Pasco. And then I followed up asking
7 about his probation status.

8 Q. Okay. And what did he tell you?

9 A. He said that he had been released from probation
10 two months ago and that he had served time in prison for
11 bank robbery.

12 Q. And were you able to confirm that with dispatch?

13 A. Dispatch showed, through the Washington State
14 Patrol, that his probation status was active. They had
15 the name of his probation officer on file. When I had
16 spoke with Mr. Neal about his probation status, he said
17 that he had been released, but he -- he was unable to
18 provide me the name of -- of the probation officer.

19 Q. Okay.

20 A. And due to the hour, we were not able to confirm
21 that by calling the -- the probation office.

22 Q. Okay. And then what happened?

23 A. I began to prepare my electronic tint meter to
24 measure the window tint. And during this time, LPD
25 Officer Reese arrived with his drug detection K-9.

1 Q. Okay. And approximately what time was that that
2 Officer Reese arrived on scene?

3 A. 1:07 a.m.

4 Q. And what happened once Officer Reese arrived?

5 A. I spoke briefly with him about the contact. It's
6 his routine, just from my experience with working with
7 him, to -- to contact the owner of the vehicle, or the
8 operator. And while he spoke with him briefly to
9 explain what he was going to do, I began to apply the
10 tint meter to confirm the window tint violations.

11 Q. Okay. And what did your tint meter tell you?

12 A. The -- I measured the front passenger door window
13 tint. It measured 17 percent. The legal limit is
14 35 percent. So it was too dark. I then moved to the
15 rear passenger door, and it measured 16 percent. And it
16 can be darker in Idaho on that window, as dark as
17 20 percent. And then I moved to the rear glass, so
18 opposite of the windshield just straight back. And,
19 again, that window is required to measure 35 percent.
20 It measured 26 percent. And Idaho Code allows for a
21 three-percent variance, plus or minus.

22 Q. Okay. And so after measuring the window tint on
23 all the windows, then what did you do?

24 A. At that time, Officer Reese deployed his drug
25 detection K-9. It was approximately 1:11 a.m.

1 Q. Okay. And what happened?

2 A. Officer Reese advised his K-9 alerted to drug
3 odor. And he spoke to Mr. Neal about the response from
4 the K-9.

5 Q. Okay. And then what did you do?

6 A. I was -- I was present when Officer Reese and
7 Mr. Neal had that brief conversation. And Mr. Neal
8 commented that there might be drug odor in the car from
9 the previous owner. He did not elaborate on that, but
10 he stated that he had earned -- excuse me, he had owned
11 that vehicle for approximately six months.

12 Q. And was it at that point that you began searching
13 the vehicle?

14 A. Yes.

15 Q. And now, where did this -- you testified that
16 this traffic stop occurred in the Jack in the Box
17 parking lot?

18 A. Yes.

19 Q. And what city and state is that located in?

20 A. In Lewiston, Idaho.

21 Q. Okay. And you began your search of the vehicle?

22 A. Yes.

23 Q. And what did you find?

24 A. I found a -- a digital scale that had a white
25 crystal residue that, from my training and experience, I

1 believed to be methamphetamine residue. And it was
2 found in the center console between the front -- the two
3 front seats.

4 Also in that same center console, there was a
5 gray and black flip-style cell phone. And there was
6 another phone that looked identical to that phone in
7 plain view in a cup holder. So one was in plain view
8 from the vehicle in a cup holder. The other cell phone
9 was in the center console that was concealed, until I
10 opened it, with the scale. And then there was some
11 other just personal items in that center console.

12 Q. Okay. Where did you search next?

13 A. That was the area that I was searching at the
14 same time Officer Reese was searching. And he found
15 a -- like a tin measuring cup. He said it was in the --
16 the lower pocket of the driver's door. And I observed
17 it contained a black-colored residue.

18 And then he also found three hypodermic needles
19 on the floor area in front of the driver's seat. And
20 these -- the syringes had been placed inside of a
21 plastic toothbrush container. And they -- they all
22 appeared to have been used, but there was no substance
23 left inside of them.

24 Q. Okay. And where did you search next?

25 A. In the trunk of the vehicle.

1 Q. Okay. And what did you find?

2 A. There was a black backpack inside the trunk. And
3 when I opened it, there was an unused hypodermic needle
4 that was sealed in plastic wrapping. And then there was
5 another -- in a separate pocket, there was another used
6 hypodermic needle. Again, it didn't appear to contain
7 any substance.

8 Q. Were you able to determine who that backpack
9 belonged to?

10 A. Yes.

11 Q. How were you able to determine that?

12 A. In speaking with Mr. Neal, he claimed that the
13 backpack was his property.

14 Q. Okay. And what else did you find in the
15 backpack?

16 A. There was a -- a notebook inside the -- there
17 was -- there was a laptop computer, and then a notebook
18 in the large area -- pocket of the backpack. And the
19 first few pages of the notebook appeared to contain
20 school-related notes. The majority of the pages of that
21 notebook were blank. And then when I flipped to the --
22 the last page, I noticed some notes written on that last
23 page.

24 Q. And why did you think those notes were
25 significant?

1 A. The -- the notes -- they had names or a
2 letter, like an initial. For example, the name Ben,
3 another name Matt, and then maybe the initial "R" or
4 other -- other initials. And next to the name or
5 initial was a number. For example, next to Ben was 140.
6 And next to Matt was 90. 90 had then been crossed out,
7 and then next to that was 470. So those notes were
8 significant to me.

9 Q. Why were they significant? What was their
10 significance?

11 A. From my training and experience, I believed that
12 those notes were a drug ledger, a pay owe sheet. It's a
13 method that people sometimes use to track who they sell
14 controlled substances to for how much, how much is still
15 owed.

16 Q. And then did you continue your search of the
17 vehicle?

18 A. I did. There was -- there was a -- I didn't
19 notice initially until I found the notebook, but there
20 was another notepad in the passenger area from a hotel.
21 I think it was from the Red Lion Hotel. And it had
22 similar notes written on that notepad, multiple letters
23 as if they were initials with numbers written next to
24 it. For example, "G" with 200 next to it. And 200 was
25 crossed out, and then 400 was written to the side of

1 that. So I -- I believed that that was an additional
2 drug ledger.

3 Q. And were you able to determine who the owner of
4 that second notebook was?

5 A. I know we discussed them. I don't know if I
6 specifically discussed the notepad, but --

7 Q. The second notebook?

8 A. We talked about the notebook. And in a later
9 conversation while we were -- I think it was when we
10 were en route to the jail, he said that the notes were
11 from a fantasy football league.

12 Q. Is what the defendant told you?

13 A. Correct.

14 Q. Okay. And at that point, did that conclude your
15 search of the vehicle?

16 A. I believe so. Yes, I believe so.

17 Q. Okay. And so then what did you do?

18 A. Based on the totality, the syringes, the
19 paraphernalia, his behavior, again, I was even more
20 suspicious that -- that he had recently used
21 methamphetamine. And so I asked him if he had.

22 Q. And what did he tell you?

23 A. He said it had been years since he had used meth.

24 Q. Okay. Now, at this point, did you place him
25 under arrest?

A. No. We had a conversation about the use of methamphetamine and the needles found in the car. And then I requested he perform the standardized field sobriety evaluations.

Q. And that was because you thought that he was impaired driving?

A. Correct.

Q. Okay. And what were your results for those field sobriety tests?

A. I -- I observed signs and symptoms that, based on my training and experience, believed were consistent with drug influence, but I did not conclude that he was impaired.

Q. Okay. And so what did you do next?

A. I asked Mr. Neal about the scabs that I had previously observed on his arm, and he explained to me that -- that he had been bitten by a dog. That is what caused the scabs. He denied that they were injection sites.

Q. Okay. And what did you do next?

A. I asked him about the digital scale. I told him that there was residue on the scale, and he said he didn't know anything about it. He did claim ownership of the two cell phones, and I informed him that I had found one of the cell phones in the same compartment as

the scale and -- and that that led me to believe that he was aware the scale was in his car.

Q. Okay. And was it at that point that you placed him under arrest?

A. Yes.

Q. Okay. And approximately what time was that?

A. About 1:53 a.m., I arrested him for possession of drug paraphernalia.

Q. Okay. And what did you do?

A. Secured him in handcuffs, conducted a search of his person and secured him in the back seat of my patrol car.

Q. Okay. And you indicated that you completed a search of his person?

A. Yes.

Q. What did you find?

A. There was some small -- I think a small piece of -- of cotton and then another full cotton swab. The piece of cotton was in the pocket of, I think, a vest he was wearing. Excuse me. And then the cotton swab was in his pant pocket.

Q. And did you find anything else?

A. No. I just thought it was odd that he had the cotton on his person.

Q. And then did you also find his wallet?

1 A. Yes.

2 Q. Where was that located?

3 A. In his -- the back pocket of his jeans.

4 Q. Okay. And what did you find?

5 A. A large amount of cash inside.

6 Q. How much cash?

7 A. \$1,677.

8 Q. Okay. And so at this point, was he transported
9 to the Nez Perce County Jail?

10 A. Yes.

11 Q. And what happened once you arrived at the jail?

12 A. Previously to the transport, I had advised him of
13 his Miranda rights. He stated he understood them. Then
14 we had a conversation during the transport.

15 Q. Okay. And what was the nature of that
16 conversation?

17 A. He was asking about what would happen next, his
18 bond and such. And he told me that he was trying to be
19 cooperative because there was nothing in his car. And I
20 reminded him that I had found drug paraphernalia in his
21 car. And he said that he hadn't even thought of that
22 because he was thinking of serious things like -- I'm
23 trying to remember what he said. I know he said
24 weapons. I think he said he was thinking of serious
25 things like guns.

1 Q. Okay.

2 A. And so I told him I would have appreciated him
3 telling me about the syringes so that I -- to avoid the
4 hazard of getting stuck by one. And he apologized for
5 that.

6 And so in our conversation, he admitted that he
7 used meth by using hypodermic needles. He said that
8 he -- that there were multiple needles in the car
9 because he tried to be clean with using one needle per
10 use rather than multiple uses.

11 And I asked where he would inject the meth, and
12 he said in his muscles and all over his body. And so I
13 commented that, in my experience, a lot of people
14 that -- that use meth also sometimes sell it because
15 it's an expensive habit, and that way, they can finance
16 that -- that habit. And he replied, yeah, I see what
17 you're saying.

18 So we talked about his use of meth, and he said
19 that he -- he agreed that he used about four or five
20 times every couple weeks, which would equal
21 approximately one gram of meth during that time. And he
22 commented -- he said, that shit is cheap in Tri-Cities.

23 Q. And so at this point, had you arrived at the
24 jail?

25 A. Not quite. In our conversation, I asked him

about, you know, at this point, when he had admitted that he used meth, I asked why -- why do you have a scale then? And he said that if he purchases it, he didn't want to get ripped off for the quantity of it.

And so I asked if -- since he had said that he -- that it was really cheap from where he lived, I asked how much he brought with him, because he previously said he had been staying in Lewiston for four or five days. And he -- he said that he didn't bring any with him and commented that was his problem. I believed he was referring to the sweating and the way he was acting, as I've seen people exhibit similar signs when they're detoxing from using a controlled substance.

And that pretty much concluded our conversation. We arrived at the jail at about 3:00 a.m. -- or excuse me, I think it was before -- it was prior to 3:00 a.m.

Q. And once you arrived at the jail, did you take the defendant into the jail?

A. Yes.

Q. And what happened once you got inside the jail?

A. I released him to the custody of jail staff, and I requested a full body search based on the -- my investigation and my suspicions that he may be concealing contraband on his person.

Q. Okay. And did you remain at the jail while they

were conducting the search?

A. Yes.

Q. And what happened after they conducted the search?

A. Corporal Bonds from the Nez Perce County Sheriff's Office, he returned to the booking area with a black sock and had told me he found it in Mr. Neal's underwear during the -- the strip search.

Q. And did you look to see what the contents of the black sock was?

A. Yes.

Q. And what did you find?

A. There was a plastic baggy with a black tar-like substance that I believed to be heroin. There was a separate plastic baggy with a -- a large piece of a white crystal substance that I believed to be methamphetamine. And then there was another plastic baggy with four yellow pills that were later identified as Hydrocodone.

Q. Okay. And once Corporal Bonds provided you with those items, what did you do with them?

A. I -- I secured them -- eventually, secured them in, initially, my patrol car, and then eventually into an evidence locker at the State Police office. And then I completed the charging paperwork at the jail.

Q. Okay. And once you placed those items in the evidence locker at ISP, were they sent to the lab?

A. They were. I -- I used a field testing kit prior to submitting them to the lab, and also weighed the substances on a certified scale in our evidence room.

Q. Okay. And then it was at that point that they were --

A. Correct.

Q. -- put in the evidence locker?

A. Yes.

Q. And sent to the lab?

A. Yes.

Q. And have you received a report back from the lab?

A. Yes.

Q. Have you had an opportunity to review it?

A. Yes.

MS. SMITH: May I approach the witness, Your Honor?

THE COURT: You may.

BY MS. SMITH:

Q. Okay. If you could first take a look at what's been marked as State's Exhibit 2. Do you recognize State's Exhibit 2?

A. Yes.

Q. And how do you recognize that?

A. Appears to be a copy of the Idaho State Police Forensic Laboratory report regarding this case.

Q. And how do you know that it's related to this case?

A. I see my case number that was assigned to this case. The date of offense is correct, April 24th. My name is noted here. The suspect -- or excuse me, the defendant's name, Brian Neal, is noted here, as well as the exhibits tested are consistent with the exhibit numbers assigned to the substances that were submitted for testing.

MS. SMITH: The State moves for the admission of State's Exhibit 2.

THE COURT: Mr. Hurn?

MR. HURN: No objection, Your Honor.

THE COURT: State's Exhibit 2 will be admitted.

EXHIBITS:

(State's Exhibit No. 2 received into evidence.)

BY MS. SMITH:

Q. The substance that is listed as Item No. 1 on the lab report, what does the lab report indicate that substance is?

A. Heroin.

Q. And Item No. 2?

A. **Methamphetamine.**

Q. Okay. And now, going back to the heroin, what is the weight of the heroin?

A. **Indicated here on the report, 6.9 grams.**

Q. And is that consistent with what you got the weight as when you weighed it?

A. **Yes.**

Q. Okay. Now, over to the side, there's a column indicating additional information.

A. **Yes.**

Q. Did you speak with the lab, an analyst, about that information?

A. **Yes.**

Q. And what is that information regarding?

A. **It talks about -- it says the uncertainty was calculated at the 95 percent confidence level. And that's regarding the weight. It was explained that because the weight of the heroin was so close to seven grams, which is the upper sentencing criteria, instead of -- two to seven grams would be three years, and ten to 28 grams would be ten years. Because of that, they -- they put this comment to see what -- what level of certainty that the weight is accurate.**

As you can see, under the description, it says

6.90 grams, plus or minus .05 grams. So that's 95 percent accurate that they're in that weight range.

Q. Okay. And now if you wouldn't mind looking at State's Exhibit 1A. Actually, if you would just look through all of the pictures and tell me if you recognize all of the pictures.

A. **Yes, I do.**

Q. And how do you recognize them?

A. **Each is a copy of a photograph that I took of the -- regarding this case.**

Q. And the items that are depicted in the photographs, those are true and accurate representations of items that you seized on the night of April -- or the morning of April 24th?

A. **Yes.**

MS. SMITH: State moves for the admission of State's Exhibit 1A through 1G.

THE COURT: Any objection, Mr. Hurn?

MR. HURN: If I could just look at the original color copies here. I have one that I just wanted to see what it looks like.

THE COURT: All right.

MR. HURN: No objection, Your Honor.

THE COURT: All right. State's 1A through

1G will be admitted.

1 EXHIBITS:

2 (State's Exhibit Nos. 1A-1G received into
3 evidence.)

4 (DISCUSSION HELD OFF THE RECORD.)

5 BY MS. SMITH:

6 Q. Now, you also indicated that you took the
7 defendant to the Nez Perce County Jail. And what city
8 and state is that located in, or county and state?

9 A. **It's located in Lewiston, Nez Perce County,
10 Idaho.**

11 Q. Thank you.

12 MS. SMITH: I have no further questions,
13 Your Honor.

14 THE COURT: Cross-examination?

15 MR. HURN: Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HURN:

18 Q. So you said you originally observed my client at
19 the Dyna Mart?

20 A. **The vehicle.**

21 Q. Oh, the vehicle? Okay. So you didn't see him at
22 the Dyna Mart then?

23 A. **I did not.**

24 Q. And did you attempt to make any inquiries of the
25 owner of that vehicle having a tint violation at the

1 Dyna Mart?

2 A. **No.**

3 Q. And that night, do you recall what the weather
4 conditions were?

5 A. **I believe it was cloudy. It was approximately
6 45 degrees. It was sprinkling. It was raining just --
7 just lightly.**

8 Q. Now, you say you observed the first alleged
9 infraction was failing to signal when he merged onto
10 U.S. 12?

11 A. **Yes.**

12 Q. If I could back up just a little bit. How long
13 were you at the Dyna Mart?

14 A. **Probably about ten minutes.**

15 Q. And that involved a traffic stop prior?

16 A. **Correct.**

17 Q. Okay. And where were you positioned the next
18 time you observed Mr. Neal's car?

19 A. **I was parked east of the Dyna Mart near the
20 parking area for the Pacific Pride fuel pumps. It's
21 right near the intersection there of Highway 12 and 128.**

22 Q. And what direction were you facing?

23 A. **I was facing north. And 128 runs east and west.**

24 Q. Now, when you pulled my client over, it was your
25 testimony that he -- he told you that he was under some

1 sort of doctor's care for anxiety?

2 **A. He didn't necessarily say he was under a doctor's**
3 **care. He said that he had a condition for anxiety and**
4 **he used some medication. He later in that conversation**
5 **said that he also saw a psychiatrist.**

6 **Q. And I heard -- or correct me if I'm wrong, but**
7 **did I hear testimony that you have training in**
8 **recognizing people that are on -- under the influence of**
9 **a controlled substance?**

10 **A. Yes.**

11 **Q. As part of that training, were you taught to**
12 **eliminate things that may also be an observed sign that**
13 **could be misinterpreted?**

14 **A. Sure. We always make that effort.**

15 **Q. Would part of that include trying to eliminate**
16 **someone who may be under -- let me back up. Would**
17 **anxiety be something you would be looking for to try to**
18 **eliminate in that examination?**

19 **A. We would ask questions to see if there's a**
20 **condition, yes.**

21 **Q. Okay. So anxiety could potentially exhibit signs**
22 **that are similar to someone who's under the influence;**
23 **is that accurate?**

24 **A. I think anxiety -- yeah, I would -- I would agree**
25 **that some signs and symptoms would be consistent.**

1 **Q. When you pulled my client over, when you were**
2 **initially talking with him, did you smell any odor of**
3 **alcohol?**

4 **A. No.**

5 **Q. Did you smell any odor of marijuana?**

6 **A. No.**

7 **Q. And did you say that you were a drug**
8 **recognition -- excuse me, a drug recognition expert?**

9 **A. Yes.**

10 **Q. Does that mean that you no longer are certified**
11 **or --**

12 **A. That's correct.**

13 **Q. So you didn't do anything to lose your**
14 **certification; you just did not renew it?**

15 **A. That's correct. When I left patrol as an ISP**
16 **detective, because of that assignment in investigations,**
17 **they did not keep up my certification.**

18 **Q. Now, when you were observing my client while --**
19 **as he's driving down U.S. 12, did you observe any signs**
20 **of impaired driving then?**

21 **A. No.**

22 **Q. So when you turned your lights on and your siren,**
23 **at that point, there was no suspicion of any sort of**
24 **impaired driving?**

25 **A. Not the obvious clues. And certainly I've**

1 **stopped impaired driving for not signalling. But no, he**
2 **did not fail to maintain his lane or anything obvious**
3 **that I would initially suspect that that was an impaired**
4 **driver.**

5 **Q. Now, when you stopped my client, if I remember**
6 **correctly, you've testified here today that you started**
7 **to issue a citation?**

8 **A. Yes.**

9 **Q. Do you know what approximate time that was**
10 **that -- that you started to issue a citation?**

11 **A. Let me see if I can find that for you. I think**
12 **it was about 12:53 a.m.**

13 **Q. That's when you started to write the citation?**

14 **A. Yes.**

15 **Q. What would that citation have been for at that**
16 **point?**

17 **A. I'm actually looking at the wrong citation. Let**
18 **me get to the insurance citation. It's the same time,**
19 **12:53 a.m. And that citation was for not providing**
20 **current proof of liability insurance.**

21 **Q. Okay. Now, you said there -- you were looking at**
22 **the wrong citation. Was there more than one that was**
23 **written?**

24 **A. Correct.**

25 **Q. Okay. And the other one that you're referring**

1 **to, what would that have been a citation for?**

2 **A. Possession of drug paraphernalia and possession**
3 **of the Hydrocodone, Schedule 3 controlled substance.**
4 **And I think I completed that later at the jail.**

5 **Q. So that wasn't part of what you were issuing a**
6 **citation for at that point?**

7 **A. Correct.**

8 **Q. And if I'm understanding your -- it's your**
9 **testimony that the stop occurred at 12:41 a.m.?**

10 **A. Yes.**

11 **Q. And is it also your testimony that you called for**
12 **a backup officer for security at 12:47?**

13 **A. Yes.**

14 **Q. Okay. Do you know what time you called -- or you**
15 **spoke with a K-9 officer, in this case, Officer Reese?**

16 **A. Let me see if I can find that time. I was -- it**
17 **was about the same time that I began to complete the**
18 **citation, about 12:53 a.m. While I was in my patrol**
19 **car, he called me as he was getting ready to respond to**
20 **ask about the circumstances of my stop.**

21 **Q. And during that phone conversation with Officer**
22 **Reese, he indicated to you that he was just woken up,**
23 **correct?**

24 **A. Yes.**

25 **Q. And that he had to get his stuff together,**

1 correct?

2 **A. I believe so.**

3 **Q.** And you -- was it your testimony then that
4 Officer Reese began talking with my client at 1:07?

5 **A. He arrived at 1:07, and he deployed his K-9 at**
6 **1:11. So in between that time, he spoke briefly with**
7 **Mr. Neal.**

8 **Q.** So between 12:53 when you say you contacted
9 Officer Reese and 12 -- or excuse me, 1:07 in which he
0 arrived, what specifically were you doing to write that
1 citation?

2 **A. Yeah, I was completing the fields, but I also had**
3 **some conversations.**

4 **Q.** When you say "the fields," are you saying the
5 field sobriety tests?

6 **A. No. The fields within the -- the citation. It's**
7 **an electronic ticket, so the -- the laptop in my car, it**
8 **generates the document. And then I -- I enter the**
9 **information. But in between that, I had two**
0 **conversations with Mr. Neal. And I was also speaking**
1 **with dispatch about the records request.**

2 **Q.** So that I'm understanding, you're saying the
3 fields are an electronic field that's within a computer
4 software program --

5 **A. Correct.**

1 **Q.** -- not field sobriety tests or field test kits?

2 **A. Correct.**

3 **Q.** Now, you've said that you ultimately issued a
4 citation for possession of paraphernalia as well as for
5 the Hydrocodone?

6 **A. Yes.**

7 **Q.** What specifically, in your mind, was the
8 paraphernalia?

9 **A. Primarily the scale that had the white crystal**
0 **residue and the multiple used hypodermic needles. And**
1 **then the -- the tin measuring cup with the black**
2 **residue.**

3 **Q.** So those you considered paraphernalia?

4 **A. Yes.**

5 **Q.** And paraphernalia, isn't the definition of it
6 something that would be used to ingest or smoke or
7 consume a controlled substance?

8 **A. No.**

9 **Q.** So it could be other things then?

0 **A. Yes.**

1 **Q.** Such as a scale, needles --

2 **A. Baggies.**

3 **Q.** -- a tin cup, baggies?

4 **A. Correct.**

5 **Q.** But they're all used -- the ultimate purpose of

1 paraphernalia is in furtherance of consuming a product
2 that's illegal, correct?

3 **A. Well, paraphernalia is a broad term. Drug**
4 **paraphernalia would relate to drugs. You could have**
5 **paraphernalia related to tobacco use or --**

6 **Q.** So --

7 **A. -- any other item.**

8 **Q.** So drug paraphernalia, would you agree then that
9 drug paraphernalia deals directly with the ability to
10 consume an illegal substance?

11 **A. No.**

12 **Q.** Okay. So then it wasn't paraphernalia?

13 **A. You're saying "consume." And it's not -- it's**
14 **not just consume. Paraphernalia could be anything that**
15 **has to do with -- it could be packaging. It could be**
16 **the transportation. It could be just simply weighing.**
17 **And none of that has to do with consuming, but it has to**
18 **do with a controlled substance.**

19 **Q.** Now, you said you conducted a couple of field
20 test kits on some of the stuff you discovered; is that
21 correct?

22 **A. Yes.**

23 **Q.** Specifically, what was tested -- or let me back
24 up or rephrase. Was the scale tested for -- field
25 tested?

1 **A. No.**

2 **Q.** Was the -- the tin measuring cup, was that ever
3 tested?

4 **A. No.**

5 **Q.** Were the needles ever tested?

6 **A. No. I didn't seize the needles.**

7 **Q.** Oh. Did you ever observe them?

8 **A. I did observe them.**

9 **Q.** Did they, from your observations, appear to have
10 any controlled substances in them?

11 **A. No. There was -- the only residue that I saw was**
12 **a small amount of red liquid, which I believed to be**
13 **blood. Whether or not -- I guess there's a potential**
14 **that there may be some residue of whatever substance had**
15 **been in that needle, but from the safety concern, I did**
16 **not --**

17 **Q.** So there was no --

18 **A. -- pursue that.**

19 **Q.** -- test?

20 **A. No.**

21 **Q.** Did my client ever -- well, did you ever ask my
22 client about why he had those needles?

23 **A. Yes, I did.**

24 **Q.** And what was his explanation? Let me rephrase.
25 Did he tell you that those were his aunt's needles?

1 A. Yes. Can I explain?

2 Q. Certainly.

3 A. It was -- he did, but his response was suspicious
4 because he said, um, my aunt's a diabetic maybe. I
5 found that odd.

6 Q. Now, when you went over the money that was on his
7 person -- was it on his person, first of all?

8 A. It was in his wallet.

9 Q. But I guess --

10 A. I think that was in his --

11 Q. -- was his wallet on his person?

12 A. Yes, I believe so.

13 Q. And that money, did you also -- did my client
14 explain to you that he had won that at the casino --

15 A. He said --

16 Q. -- or one portion of that?

17 A. Yes.

18 Q. And did he provide a receipt for \$1200 from the
19 casino?

20 A. I found that receipt in the car.

21 Q. Okay. So you had no reason to believe that he
22 wasn't telling the truth for that \$1200 then, correct?

23 A. I did believe he won that \$1200, as indicated,
24 eight days prior.

25 Q. Now, when you checked the tint on my client's

1 A. Yes.

2 Q. And is it accurate to say that the patrol video
3 begins on the bridge of U.S. 12?

4 A. Yes.

5 Q. And it doesn't actually have any video relating
6 to what you allege is the initial failure to signal?

7 A. Correct.

8 Q. Why do you think that is that that video isn't in
9 there?

10 A. I hadn't activated my camera at that point.

11 Q. So is there -- when you activate your video, is
12 it -- or activate your lights and siren, is that
13 instantaneous then in starting the video?

14 A. No. It prerecords back. I'm not exactly
15 positive how long. I believe 15 seconds it will kick
16 back and capture the prior 15 seconds.

17 Q. And is there any ability to capture anything
18 before that 15 seconds if you don't know it at that
19 second?

20 A. Not to my knowledge.

21 Q. Are you aware if the Idaho State Police keep any
22 sort of statistics on how long traffic stops are taking?

23 A. I don't know.

24 Q. So you're never talked with -- or your
25 supervisors never approached you and said, this is the

vehicle, that was after Officer Reese arrived, correct?

1 A. Yes.

2 Q. And the field sobriety tests, for your suspicions
3 of a DUI, that was also conducted after -- after Officer
4 Reese arrived?

5 A. Yes.

6 Q. And the field sobriety tests, wasn't that
7 conducted after the search occurred?

8 A. Yes.

9 Q. So if I'm understanding the timeline, it's 12:41
10 until 1:11 that the search actually occurs, correct?
11 That would be a half an hour?

12 A. It was actually a half an hour from the time I
13 stopped the vehicle to the time Officer Reese deployed
14 his dog. And then five minutes after that -- excuse me,
15 that deployment, we searched the vehicle.

16 Q. And the tint meter that you used to do your work,
17 was that located in your car?

18 A. Yes.

19 Q. So you didn't need another patrol vehicle to
20 bring one out?

21 A. No.

22 Q. Okay. Now -- and maybe this is just a layman's
23 question here, but have you seen the video from your
24 patrol video of that night?

1 average time of a traffic stop?

2 A. No.

3 Q. With regards to your -- your experience as a
4 detective in narcotics, as a patrol officer, people that
5 are using a controlled substance, when they inject it,
6 do they -- would it be fair to say they're injecting it
7 into their veins?

8 A. Not always, but more common than not, yes.

9 Q. Okay. Is that where you observed my client's
10 injection sites?

11 A. There were scabs in -- in multiple different
12 locations on his arms. So not all, I would say, around
13 a vein.

14 Q. Where would -- where would the other places be
15 that you observed that are not in a vein?

16 A. There were miscellaneous on his forearms and
17 upper bicep. So I didn't believe there was a vein in
18 every location that I observed a scab.

19 Q. Now, going over to what I think you termed the
20 "pay owe sheet," is that what you called it?

21 A. Yes.

22 Q. Okay. With the pay owe sheet, if you could look
23 at what is marked 1D, are you able to look at that?

24 A. 1D?

25 Q. "D" as in dog.

A. Yes.

Q. Up at the upper right-hand corner, can you tell me what that says?

A. It looks like a phone number, 1-800-943-3809 maybe.

Q. So it -- are you saying it appears to be an 800 number?

A. That's what it appears to me.

Q. And are you able to read what's below that, directly below it?

A. It says her. And I can't make out the other word.

Q. Are -- are either one of those things indicative of a pay owe sheet?

A. Phone numbers certainly can be.

Q. An 800 number?

A. Not -- not specifically, no.

Q. Okay. So those two items wouldn't specifically stick out to you as items of a pay owe sheet?

A. Correct.

Q. It would be other things that are located on there?

A. Yes.

Q. All right. And do you have 1E as well?

A. Yes.

1 1F document, correct?

2 A. Yes.

3 Q. What is in the very top middle of it?

4 A. Looks like a 1-800 number.

5 Q. Okay. And does it appear to be the same number
6 between that and 1E?

7 A. No. It looks like a different number.

8 Q. Would you say that it does, though, look like an
9 800 number on there?

10 A. Yes.

11 Q. Okay. Now, with regards to that, I guess we call
12 it 1E and 1F as they're labeled, is this what my client
13 was referring to when he said there was a fantasy
14 football league he was part of?

15 A. I don't know that we spoke about this notepad. I
16 know we spoke about the notebook, which would be 1D, I
17 believe.

18 Q. And what did you -- what do you think he meant
19 when he said that was referencing a fantasy football
20 league? Not what he was actually saying, but what he
21 was implying to you?

22 A. I think he implied that the notes on that
23 notebook involved something to do with a fantasy
24 football league.

25 Q. Would you interpret that to mean that he was

Q. On that one, are you able to look at the upper right-hand corner of the picture? I know it's a bit fuzzy, but --

A. If you go to 1F, is that still -- that note still visible?

Q. Certainly. We can go to 1F. What is there at the top right-hand corner to you?

A. It appears to be a date.

Q. Like an appointment or a --

A. I don't know. It says 6/10/14 at -- I think that's 3:00 p.m., possibly.

Q. Okay. And would it -- and I apologize because my copy's a black and white, so I'm having a difficult time seeing it. But is there not something above that?

A. Above that what?

Q. Above where it says 6/10 of '14.

A. It's -- I think that's a portion of maybe a page that had been torn off previous.

Q. Are you able to read what it says at all?

A. No. But it does look consistent with maybe another date.

Q. Okay.

A. Just the way you can see the top of it and the slashes.

Q. Okay. Now, you're able to see the rest of that

1 keeping track of people who may have owed money for a
2 fantasy football league?

3 A. I have no idea. I've never been involved in
4 fantasy football, so I'm not --

5 Q. So you didn't inquire --

6 A. -- very familiar.

7 Q. -- any deeper than that?

8 A. I did not.

9 Q. Now, you also testified here that, in your
10 conversations with my client on the way to the jail,
11 that he discussed with you his use of controlled
12 substances is four or five times a month? Was that your
13 testimony?

14 A. Not a month. I said four -- I think that I --
15 well, let me refer to it so I'm accurate here. I had
16 asked him if he was using meth four or five times a
17 week. And he said yes, and then added, or about that
18 many times every couple weeks.

19 Q. So that was you asking him about methamphetamine,
20 not him volunteering it?

21 A. Correct.

22 Q. Now, when Deputy Bonds called you back to the
23 jail -- or were you at the jail?

24 A. I was in the booking area at the jail.

25 Q. So when he contacted you about what he located,

how many baggies did he say he located?

A. Well, he emptied the sock in front of me, so we observed the contents together.

Q. How many baggies were they -- or were there, excuse me?

A. Three.

Q. And how big were they?

A. They were probably a normal -- I think they were a normal sandwich size baggy.

Q. Are you talking about the sandwich baggies that are just a flip fold over, or are we talking ones that you have to zip to seal?

A. I think that the suspected heroin and meth were each in a -- a sandwich baggy that is not a ziplock style. And then I think that the four pills were in a smaller baggy. I can't recall exactly.

Q. In your job with the Idaho State Police, do you come into contact with heroin on a regular basis?

A. No.

Q. Are you -- as a former drug recognition expert, do you think these were packaged for personal use?

A. No.

Q. Why is that?

A. In my experience, personal use heroin, they refer to that as dots, because they're very small -- it

requires a very small amount for a use. Certainly, almost a quarter ounce of that substance, in my experience, is not consistent with personal use.

Q. Now, are you saying that each bag is a dot?

A. Not bag. I'm saying that that's typically what's referred to for a personal use. Someone would buy a dot of heroin because it's a very small amount per use.

Q. What would that -- what would that be in scientific terms as far as what you would -- a weight or --

A. I don't know that I've ever weighed a dot. Probably maybe a tenth or two-tenths of a gram.

Q. So if this were -- in your opinion, if it were personal use, there would only be a dot, not several in there?

A. Because of the amount -- because of the small amount for -- that's typically used with -- with a personal amount, almost seven grams is -- is much in excess of that, in my experience.

Q. And -- and how are -- what would be a standard form of sale weight if someone -- well, let me back up. Have you ever conducted purchase -- like, controlled buys of heroin?

A. Yes.

Q. All right. And in those purchases, what would a

1 standard weight be if you want to quantify it?

2 **A. Depends on the purpose of that transaction,**
3 **whether the person is buying for personal use or if**
4 **they're buying for sale.**

5 **Q.** So if they're buying for personal use, what would
6 be a standard weight?

7 **A. Typically a half a gram or a gram.**

8 **Q.** So more than a bump -- or excuse me, a dot?

9 **A. People also will buy a dot. But it's -- it**
10 **depends on what their needs are, I guess.**

11 **Q.** But I guess what I'm asking is, personal use
12 could be more than that one-tenth or two-tenths of a
13 gram that you said is a dot. A half a gram would be
14 personal use --

15 **A. Yes.**

16 **Q.** -- what you would consider as well?

17 **A. Yes.**

18 **Q.** Okay. And it's your testimony as -- as a patrol
19 officer with the ISP and your former experience and
20 certifications with the State, that people who use
21 intravenously, inject -- they would inject in more than
22 just a vein; they -- correct?

23 **A. Usually they start in a vein. That's the common**
24 **place. But over repeated use, veins often become**
25 **destroyed or no longer accessible or available. And**

1 **I've seen people inject into other locations. In our**
2 **conversation, Mr. Neal told me that he injected into his**
3 **muscles and other places in his body.**

4 MR. HURN: No further questions, Your Honor.

5 THE COURT: Any redirect -- redirect
6 examination?

7 MS. SMITH: No, Your Honor.

8 THE COURT: You may step down, sir. Thank
9 you.

10 THE WITNESS: Thank you, Your Honor.

11 MS. SMITH: State calls Brian Bonds.

12 May -- may this witness be excused?

13 THE COURT: Any objection, Mr. Hurn?

14 MR. HURN: No objection, Your Honor.

15 THE COURT: You're free to go. Thank you.

16 Sir, if you'd come forward and raise your
17 right hand, please.

18 BRIAN BONDS,

19 a witness of lawful age, having been first duly sworn to
20 tell the truth, the whole truth and nothing but the
21 truth, was thereupon called as a witness on behalf of
22 the State and testified upon his oath as follows:

23 THE COURT: Have a seat there. Thank you.
24
25

DIRECT EXAMINATION

BY MS. SMITH:

Q. If you could please state your name and spell your last name.

A. **Brian Bonds, B-O-N-D-S.**

Q. Are you currently employed?

A. **Yes, ma'am.**

Q. Where do you work?

A. **Work for the Nez Perce County Sheriff's Office, the Adult Detention Center.**

Q. How long have you worked in the detention center?

A. **Over seven years. Almost eight years.**

Q. Okay. And are you -- what are your duties at the detention center?

A. **Currently, I'm a corporal. I supervise one of the two graveyard shifts.**

Q. Okay. And do you also participate in the -- in booking prisoners in?

A. **Absolutely, yes.**

Q. Were you working on the morning of April 24th of 2014?

A. **Yes, ma'am.**

Q. And did Trooper -- Sergeant Yount bring in a person by the name of Brian Neal?

A. **Yes, ma'am.**

Q. And did you assist in booking that person into jail?

A. **Yes.**

Q. Okay. And what happened when Sergeant Yount brought that prisoner in?

A. **Sergeant Yount arrived, and I went and met the defendant, Mr. Neal, in the pre-booking area where we do a search before they actually enter the booking area. I asked him who he was. He mentioned his name was Brian Neal. I asked Trooper -- Sergeant Yount what he was here for. He said -- he said he was going to book him in on a paraphernalia charge.**

At that time, Sergeant Yount asked if I could actually do a strip search also on this gentleman. I said that was within the parameters of our county policies and manuals due to it being associated with a drug charge. So I finished a cursory search at that point on Mr. Neal and took him into the booking area. There, I did a complete pat search on him, unhooked -- unhooked him from his handcuffs, gave him some shoes to wear and then escorted him into what we call dressing one area.

I advised one of my other deputies, Deputy Kaltenbaugh, to move to the window area, which is on the opposite side of the room. I followed Mr. Neal into

1 dressing one and secured door -- door there so that
2 he would be out of the view of everybody else due to
3 this strip search that was going to be happening. I
4 advised Mr. Neal the procedures that were going to be
5 happening, and he understood what was going on.
6 Mr. Neal took off his shirt. I examined it.
7 Found nothing. Took off his black slacks. I examined
8 them. Found nothing. He then removed his underwear.
9 They were black underwear. And at that point, I noticed
10 that there was a -- a black sock that was disclosed
11 within those -- those briefs.

12 At that point, I asked Mr. Neal what that was.
13 He said he didn't know what it was. I felt inside that
14 black sock. There was a hard object. I asked Mr. Neal
15 what the hard object was inside the black sock. He said
16 he didn't know what it was.

17 And at that point, we were pretty much done with
18 the actual search, itself, seeing that there was no
19 other contraband on his unclothed person. I asked
20 Deputy Kaltenbaugh to grab some clothing, gave the
21 clothing to Mr. Neal, secured him back into the dressing
22 room one by himself. He got dressed, and I exited the
23 room and went and informed Sergeant Yount what I had
24 found.

25 At that point, we opened up the black sock,

1 emptied it onto the floor of the booking area and found
2 that there was three objects inside the -- hidden inside
3 the black sock. They were all baggy-type objects.

4 Q. And what -- the three baggy-type objects, what
5 did you do with them?

6 A. Well, I left them on the floor for just a few
7 minutes. I had Deputy Kaltenbaugh take pictures of what
8 we had found from the black sock. And then we tried to
9 ascertain what was in the -- in the baggies at that
10 point.

11 It was very easy for us to ascertain what was in
12 one of the baggies. They were yellow -- there was four
13 yellow pills in one of the baggies that were stamped
14 with the letter "V" and the numbers 3601, I believe they
15 were. I advised Mr. -- Deputy Kaltenbaugh to log into
16 the pill identifier website to help us identify what the
17 objects were. We did identify them as a combination
18 medication, Acetaminophen/Hydrocodone, a scheduled
19 narcotic.

20 The second baggy, it appeared to be a black
21 liquidy resin-type substance inside the baggy. It
22 appeared to be possible narcotic. I wasn't positive at
23 the time. I didn't have a test kit with us. Sergeant
24 Yount did suggest there was a possibility it appeared to
25 be a heroin-type product. That wasn't made positive

60

until, more likely, Sergeant Yount's test with laboratory.

Q. And then in the --

A. The third -- the third object was the same baggy type. Inside that was a hard crystalline rock-like substance. It was about two inches long, a half inch around, and it was solid. And from years of experience and training, that appeared to be what could possibly be methamphetamine.

Deputy Kaltenbaugh took the pictures, downloaded them to the file, and I turned the -- those pieces of evidence over to Sergeant Yount at that point.

Q. Okay. Thank you.

MS. SMITH: I have no further questions.

THE COURT: Cross-examination?

MR. HURN: Yes, Your Honor, just briefly.

CROSS EXAMINATION

BY MR. HURN:

Q. So you said the search of my client occurred in search dressing room one?

A. That's correct.

Q. Did you conduct any search of that dressing room one before my client entered that room?

A. It -- it appeared to be very empty, yes, at the time that we entered -- entered the room, yes.

61

Q. Okay. So when you say it appeared to be empty, I'm not familiar with the room. So are you saying --

A. There's --

Q. -- is there anything inside the room?

A. There's a toilet.

Q. Is there anything else?

A. No.

Q. A bench, a shelf, anything at all?

A. There's an empty room. There's a shower. It's around the corner. But there's -- the only object that's actually in the room, itself, is a toilet and a sink, yeah. It's all one unit.

Q. And in that dressing room one, when my client was in there, did you directly observe him the entire time, or was there another officer?

A. There was another officer. I was behind the closed door on the west side. Deputy Kaltenbaugh was on the opposite side, on the outside of the east window, which has a window closure also. He did view the objects and the search, itself, yes.

Q. So if I'm understanding correctly, are you saying that while my client's in there, you're at one end of the room, and Kaltenbaugh is outside the room, but able to see the other end?

A. That's correct, with Mr. Neal between us.

62

1 Q. Okay. And so was tl oth of you at all times
2 when he was in there?

3 A. Yes, sir. That's --

4 MR. HURN: No further questions.

5 THE WITNESS: Okay.

6 THE COURT: Redirect examination?

7 MS. SMITH: No, Your Honor.

8 THE COURT: You may step down. Thank you.

9 MS. SMITH: May this witness be excused?

10 THE COURT: Any objection, Mr. Hurn?

11 MR. HURN: No objection, Your Honor.

12 THE COURT: You're free to go. Thank you.

13 MS. SMITH: Thank you.

14 No additional witnesses, Your Honor. The

15 State rests.

16 THE COURT: Mr. Hurn?

17 MR. HURN: No witnesses, Your Honor.

18 THE COURT: Any argument, Ms. Smith?

19 MS. SMITH: No, Your Honor. The State

20 submits.

21 THE COURT: Mr. Hurn?

22 MR. HURN: Your Honor, we would argue, in

23 this particular instance, I believe that Mr. Neal's

24 seizure of his person was unreasonably long to conduct

25 what the officer needed to do, which was -- it was an

63

1 investigation regarding these violations for failing to
2 signal, failing to maintain a five-second signal on a
3 controlled access highway and a tint violation
4 specifically. And that, if you look at the timeline, he
5 pulls over Mr. Neal at 12:41. The search from the K-9
6 doesn't begin until a half an hour later.

7 In between then, the timeline is from 12:41
8 to 12:53 -- or excuse me, 12:53, almost 12 minutes into
9 the investigation, when he says he begins writing a
10 citation for no insurance. The officer then requests a
11 K-9 officer, in this case, Officer Reese. Another
12 14 minutes goes by before there's any contact at 1:07
13 from Officer Reese.

14 Now, during that time, Mr. -- or excuse me,
15 Sergeant Yount does not conduct a tint meter search
16 until after he gets there. Certainly, he already knew
17 the violations for the failure to signal and the failure
18 to signal for five seconds. So there wasn't a further
19 investigation needed. His own observations were enough
20 at that point to write a ticket if he so chose to do so.

21 So in that time period, there's no tickets
22 being written, no citations being issued. And, in fact,
23 it's a full 18 minutes after he calls the officer that a
24 K-9 actually -- a K-9 search actually occurs with
25 Officer Reese.

You heard testimony from Mr. Yount -- or from Sergeant Yount that when he contacted Trooper -- or excuse me, Officer Reese, the K-9 officer, at 12:53, that Reese indicated to him that he was just woken up and that he needed to get ready.

It's our belief, Your Honor, that Trooper Yount extended that search -- or that seizure unreasonably long to allow Officer Reese to come down and conduct that. As you've heard from Trooper Yount -- or excuse me, Sergeant Yount, his suspicions when he made the initial contact with my client was that he was on something, not that he was selling something or containing any contraband items, just that he was concerned that he was under the influence.

When did that field sobriety test occur? After the search occurred. That's the first time he attempts to make any inquiries further into whether or not my client is under the influence and driving under the influence, the reasonable suspicion that he has of illegality. That's after the search which occurs a full half hour after the pulling over of my client and almost 18 minutes after the officer's requested to come down.

So it is our position that it -- that my client's rights have been constitutionally violated and that there should be a dismissal of this case based on

that, as the evidence obtained was in violation and, therefore, is fruit of the poisonous tree.

THE COURT: Thank you, Mr. Hurn.

Anything, Ms. Smith?

MS. SMITH: Just based on the timeline, Your Honor. Trooper Yount testified that between the time of the stop and between -- and when the -- Officer Reese arrived on scene, he began filling out the citation. He had to recontact the defendant to confirm his address. He was speaking with dispatch to find out more information about his criminal history and whether he was on probation. And he had also called and was waiting for a backup officer to arrive.

So doing all those things during that very short time period, the State would submit is not an unreasonable delay. That is a normal time for a traffic stop to occur in, and that the State requests the Court bind the defendant over on both charges, Your Honor.

THE COURT: All right. Thank you.

Well, I think both sides know that if there are suppressible issues, unless it's clearly suppressible, it's not going to happen at the preliminary hearing. It's supposed to be brought into the District Court. And certainly, Mr. Hurn, you can -- you can explore that possibility in the District Court,

1 because I can't make a finding at this point that it's
2 so clearly unreasonable that it violates your client's
3 constitutional rights. So for that reason, I'm not
4 going to grant your -- your motion.

5 But I think the testimony indicated that
6 Sergeant Yount was on patrol on this particular day;
7 that he had stopped a different vehicle and saw a
8 vehicle that ultimately turned out to be a vehicle your
9 client was driving, Mr. Hurn, at a gas pump with no gas
10 nozzle in there. It had been sitting there for some
11 time. He subsequently saw this vehicle later on,
12 observed it not use its blinker as it merged onto U.S.
13 12 off of 128, I think is what his testimony was.

14 He also made some observations about how
15 dark the windows were, thought that they were darker
16 than the law would allow and that he followed this
17 vehicle for a period of time across the bridge towards
18 Lewiston, and that he made a lane change and a signal,
19 according to his testimony, for about one second.

20 He subsequently pulled this vehicle over,
21 had some contact with your client, made some initial
22 observations about him; that he was sweating. He was
23 fidgety, or his leg was bouncing around. He had
24 difficulty sitting still. His speech was rapid and
25 quick. He also observed that it was about 45 degrees

1 outside. He had some discussions with him about some
2 anxiety and some anxiety disorders your client may have
3 had.

4 Based upon those observations, his testimony
5 was he thought he might have been impaired, again,
6 because he was sweating, tense, a bouncing leg, avoided
7 eye contact, rapid speech, difficulty sitting still.
8 Sometimes he stammered and sometimes he asked -- he
9 answered the questions very quickly.

10 He subsequently called a backup officer to
11 help him. The time of the stop, I think, was about
12 12:41, according to the testimony. Requested backup, I
13 think, about 12:47. And backup arrived, I think he
14 indicated, about 12:52. During all this time, he kind
15 of had recontacted your client, was having some
16 discussions with him about various things, observed some
17 scabs on his arms that looked like injection marks.

18 He then was going to issue him a citation,
19 began writing him a citation. He had previously
20 contacted dispatch about having a drug dog come out.
21 And he indicated that Officer Reese with the Lewiston
22 Police Department arrived, I think, about 1:07. He had
23 a conversation -- Officer Reese had a conversation with
24 your client. And then I believe his testimony was that
25 he began the search about 1:11, if I understand his,

testimony -- or I recall his testimony.

During that time, he used his -- I guess it's called a tintometer, and observed that the tint on the windows was -- I don't know if it was over or under the legal limit. I think it's probably over the legal limit because, although with percentages, it gets kind of weird, because I think he said on some of the windows, the legal limit's 35 percent; tint was 17 percent, which means it's not letting enough light through. So I guess it would be a violation of the law.

He indicated that Officer Reese told him -- or observed that the drug dog alerted on the vehicle. They searched the vehicle. They found a digital scale with a white crystalline substance, a couple of cell phones, a kind of measuring cup with black residue in it, some used hypodermic needles on the floor. Searched the trunk, found a backpack, some more needles, a laptop, notebook. In the notebook, he saw what he believed, based upon his training and experience, could have been a drug ledger with some names, some initials and some numbers off to the side.

He then found a notepad in the passenger area of the vehicle, the same type of deal. And I think those are shown in State's exhibits that have been admitted on the photographs. Based upon that, he was

going to issue him a citation and arrest him for paraphernalia. Somewhere in there, he did have him perform some field sobriety evaluations. Based upon his opinion, didn't believe he was impaired to the point where he couldn't drive an automobile.

He was arrested for the drug paraphernalia, taken to the Nez Perce County Detention Center. Corporal Bonds indicated that he did a search of him, found a black sock in his underwear area. In that black sock was what turned out to be a baggy of, according to State's Exhibit 2, heroin, about 6.9 grams of it. And also in that baggy was a crystalline substance, which turned out to be methamphetamine based upon State's Exhibit 2, about 10.92 grams of that.

He also had about \$1200 cash on him. He did find -- indicated he did find a receipt for that \$1200 from the casino, which was about eight days earlier.

According to Sergeant Yount, based upon his training and experience, with the scale, the methamphetamine, what he believed to be a drug ledger, the money, that that could be possession of methamphetamine with intent to deliver. He also had, I think, significant conversations with him regarding methamphetamine use, whether or not he had any methamphetamine. Your client indicated that

1 methamphetamine was cl over in the Tri-Cities.

2 So based upon that, I'm going to bind him
3 over on Count 2, which is possession of a controlled
4 substance with intent to deliver.

5 As far as the trafficking in heroin, as I
6 indicated, that was also found on your client's person.
7 And that was clearly over the two grams that's required
8 based upon how the State chose to charge this matter.
9 So based upon the totality of the evidence, I am going
10 to bind him over also on Count 1, which is the
11 trafficking in heroin.

12 Any problem with next Wednesday, Mr. Hurn?

13 MR. HURN: No, Your Honor.

14 THE COURT: All right. We'll set it for
15 arraignment in front of Judge Brudie next Wednesday,
16 which is going to be the 21st -- the 21st of May at
17 9:00.

18 And, Mr. Neal, Mr. Hurn will give you notice
19 of that date and time. That's the next time you need to
20 be back in court.

21 Anything else, Ms. Smith?

22 MS. SMITH: No, Your Honor.

23 THE COURT: Mr. Hurn?

24 MR. HURN: No.

25 THE COURT: All right. Thank you.

1 MS. SMITH: Thank you.

2 (COURT IN RECESS.)

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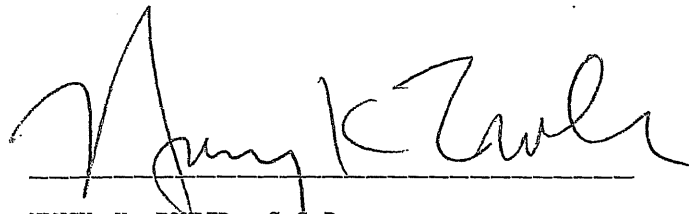
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1 CERTIFICATE

2 I, Nancy K. Towler, C.S.R., certify that I
3 transcribed into the foregoing record the proceedings
4 in the above-entitled cause, and that the said
5 transcript is a full, true and correct copy of the
6 above-entitled cause to the best of my ability, held
7 in Lewiston, Idaho, on May 14, 2014.

8 Dated this 27th day of May, 2014.
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NANCY K. TOWLER, C.S.R.
Certified Shorthand Reporter
Second Judicial District
of the State of Idaho
IDAHO C.S.R. NO. 623

12:42:16	Yount	How you doing there?
12:42:17	Neal	Hey how you doing, sir?
12:42:18	Yount	Good.
12:42:19	Neal	How you doing, sir?
12:42:20	Yount	I'm Sergeant Yount with state police. Stopped you there when you merged on from the highway onto 12 there I didn't see a signal. Then you made an illegal lane change just right back here, you signaled right as you were crossing to the other lane.
12:42:32	Neal	Yeah. Okay.
12:42:34	Yount	Any reason you didn't signal prior to the lane change?
12:42:35	Neal	I know, I just, I thought I did right. I was going properly [inaudible].
12:42:41	Yount	Ok.
12:42:41	Neal	I apologize for not signaling right.
12:42:44	Yount	Ok.
12:42:46	Neal	What else do you need? Registration?
12:42:48	Yount	Yeah, if you have that. Ok. Is this your car?
12:42:52	Neal	Alright. Yes it is.
12:42:54	Yount	How long have you owned it?
12:42:56	Neal	About six months.
12:42:58	Yount	Did you have the windows tinted or was it...
12:43:00	Neal	It came just like this when I bought it.
12:43:03	Yount	OK
12:43:03	Neal	I believe they're 35% is that legal, right?
12:43:07	Yount	Yeah, I've a got tint meter they look a little dark. Have you ever had them measured?

12:43:12 Neal No I haven't, because I though they were 35.

12:43:14 Yount What makes you believe they're 35?

12:43:15 Neal Because the guy who owned this car before me was a cop.

12:43:17 Yount OK.

12:43:19 Neal So you like see in the back, the little bear sticker on the window. Some kind of police officer. I don't know him personally but the guy I bought the car from does, so.

12:43:27 Yount Do you have a more current insurance? That one expired on the 7th.

12:43:30 Neal No six month...[inaudible] for six more months.

12:43:35 Yount OK.

12:43:36 Neal So I'm active in the mail but I haven't checked the mail yet. Yeah, I moved this summer.

12:43:43 Yount OK.

12:43:45 Neal Have to call them and have them email me to do it.

12:43:47 Yount. Ok. Where's home for you?

12:43:49 Neal Pasco, WA.

12:43:50 Yount OK. What brings you over here.

12:43:51 Neal My son lives here.

12:43:52 Yount Where at?

12:43:53 Neal Right here in Lewiston. I came to visit him and get away.

12:43:58 Yount OK. Where are you coming from right now?

12:44:00 Neal Coming from the little gas station [inaudible] you where at the little, the one right there getting gas, where you were at. the one right there getting gas. The gas station before that.

12:44:07 Yount OK. Are you sweating, or?

12:44:09 Neal OK.

12:44:14 Yount Ok. But you were just out in the gas station.

12:44:15 Neal I'm just hot because I got this [inaudible] on. [Inaudible].

12:44:21 Neal Yeah, I was inside the gas station.

12:44:23 Yount OK. How come you're so anxious here?

12:44:26 Neal I don't know. You [inaudible] get pulled over, it's like, you know.

12:44:32 Yount OK.

12:44:34 Neal Makes you seem anxious.

12:44:35 Yount You do seem anxious to me. All the property in the car belongs to you?

12:44:42 Neal Everything.

12:44:43 Yount Any weapons or firearms in the car?

12:44:44 Neal Absolutely not.

12:44:46 Yount OK. Anything illegal in the vehicle?

12:44:47 Neal Absolutely not.

12:44:48 Yount OK. What's on your shirt there?

12:44:51 Neal Space Needle.

12:44:54 Yount OK. Looks like a marijuana leaf there.

12:44:55 Neal Something like that.

12:44:56 Yount Yeah. Do you promote marijuana?

12:44:57 Neal No, I don't promote it. I don't think that it should be illegal, but I don't take it. I don't partake. I don't care either way. It doesn't matter to me. I like Seattle. I lived there for like 16 years.

12:45:07 Yount OK. Is there any marijuana in the car?

12:45:15 Neal Absolutely not.

12:45:16 Yount OK. And you didn't have that more current insurance card?

12:45:20 Neal No, it's in the mail probably. I'm up to date.

12:45:23 Yount OK. You still seem to be sweating there in the face.

12:45:27 Neal Yeah, I know it's cause I'm hot. I got my hat on. Take my hat off.

12:45:30 Yount It's pretty cool out here.

12:45:32 Neal I know it feels good out there.

12:45:34 Yount So you're saying that there's noth...

12:45:35 Neal [Inaudible].

12:45:36 Yount You're saying there's nothing illegal in the car at all?

12:45:38 Neal No there's nothing illegal in the car.

12:45:39 Yount And your anxiety is because you got...

12:45:40 Neal Yeah. I do take anxiety meds.

12:45:45 Yount What do you take for medication?

12:45:47 Neal Xanax. Or Klonopin, the generic.

12:45:49 Yount OK. When was the last time you took that?

12:45:51 Neal Three days ago. My prescription's in Pasco.

12:45:54 Yount OK. How long have you been over here?

12:45:56 Neal I've been over here for this is gonna be like the fourth day today.

12:46:00 Yount OK. You're here to visit your son?

12:46:02 Neal Been here visiting my son and some other friends. But, yeah, my son just turned 17 and I ain't seen him in a couple of years.

12:46:09 Yount OK. How come you're out so late if you're visiting your son?

12:46:12 Neal I'm just mobbing around, coming to Jack in the Box to get something to eat.

12:46:14 Yount Before you were at the gas station?

12:46:16	Neal	Yep, I was at the gas station getting some gas, and I was going to head out to the casino actually.
12:46:19	Yount	Where before that were you?
12:46:20	Neal	Visiting a friend. I was going to actually head out to the casino.
12:26:24	Yount	When we finish up here will you let me search your car?
12:26:27	Neal	No, no, no I don't really want you to search my car.
12:26:32	Yount	OK. Well, I think, you know, based on how you're acting I think there's something in the car you shouldn't have. Is there any reason a narcotics k9 will alert to anything?
12:26:42	Neal	No. No..
12:26:43	Yount	OK. Well I'm gonna go request one come out here.
12:26:46	Neal	Alright.
12:26:47	Yount	OK. Any paraphernalia or anything?
12:46:49	Neal	Nope.
12:46:52	Yount	OK. Now you're starting to breathe heavier.
12:46:54	Neal	Sir, you're giving me the third degree. I don't have nothing wrong with me.
12:46:58	Yount	I'm just asking you simple questions, and you're beginning to sweat more from your face.
12:47:00	Neal	I know, I apologize. I've been sweating.
12:47:04	Yount	It's chilly out here. And you are, and you're beginning to breathe at a more rapid pace.
12:47:05	Neal	I'm hot, I know. I just took my sweater off.
12:47:11	Yount	You can't keep your leg still.
12:47:12	Neal	My legs...sorry, I don't know. I'm not doing nothing illegal. I'm perfectly fine. I just, when a cop pulls you over, you get nervous. It is what it is. I apologize for it. I don't know what else to say.

12:47:27 Yount OK. Alright. I'm gonna have you step out of the vehicle.
12:47:28 Neal Alright. Alright.
12:47:35 Yount Come on back here for me.

ORIGINAL

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2014 SEP 23 PM 4 10

PATTY O. WEEKS
CLERK OF THE DIST. COURT
P. O. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. CR2014-0003285

STATE'S RESPONSE TO
DEFENDANT'S MOTION TO SUPPRESS

COMES NOW, SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney for
Nez Perce County and hereby makes the following Response to Defendant's Motion
to Suppress.

FACTS:

On April 24, 2014, Sergeant Ken Yount of the Idaho State Police stopped a
vehicle in the parking lot of the Jack in the Box restaurant in Lewiston, Idaho. The
reason for the traffic stop was suspected violations of Idaho Code: illegal tint on
windows; failure to display turn signal; and improper turn signal use. (Prelim Trans.
Pg. 9 - Ln 1-3) The stop occurred at approximately 12:41 AM. Sgt. Yount made
contact with the only occupant of the vehicle, the driver, Brian Neal. Mr. Neal
provided Sgt. Yount with a Washington Driver's License. At the time of contact,

Sgt. Yount observed Mr. Neal's face and forehead were wet (sweating), his left leg was bouncing, he was having difficulty sitting still, and his speech was quick and rapid (Prelim Trans Pg. 10 - Ln 1-4). This was unusual given the outside temperature was approximately 45 degrees. Mr. Neal told the officer he suffered from anxiety. Sgt. Yount asked for vehicle registration and insurance (noting the insurance had expired-another potential violation of Idaho Code) and continued his conversation with Mr. Neal. Based on Sgt. Yount's previous experience as a Drug Recognition Expert and Mr. Neal's behaviors, Sgt. Yount suspected Mr. Neal may be under the influence of a controlled substance. At 12:47 AM, Sgt. Yount called for a back-up unit as he intended to evaluate Mr. Neal for drug impairment as well as calling for a K-9 unit to respond. The back-up unit, Trooper Wesche, arrived at approximately 12:52 AM. During the time preceding the arrival of Trooper Wesche, Sgt. Yount was in contact with dispatch and following up with Mr. Neal regarding any prescribed medication for his anxiety (Prelim Trans Pg. 11-23). When Trooper Wesche arrived, Sgt. Yount returned to his vehicle to complete a citation for failure to provide proof of insurance. During that time, dispatch advised Mr. Neal was on active probation in Washington, while Mr. Neal said he had been released from probation two (2) months prior. (Prelim Trans Pg. 17-1-25).

Sgt. Yount prepared his electronic tint meter to measure the window tint, and Lewiston Police Officer, Chris Reese arrived with the K-9, the time was approximately 1:07 AM (Prelim Trans Pg. 17 Ln 23-25; Pg. 18 Ln 1-3). While Officer Reese spoke with Mr. Neal, advising him of the procedure for the K-9 deployment, Sgt. Yount proceeded to measure the window tint, and Officer Reese deployed the K-9 at 1:11 AM. Sgt. Yount was advised the K-9 alerted, and Sgt.

Yount conducted a search of the vehicle based on the probable cause established by the K-9 alert. Various items of contraband were located in the vehicle including (but not limited to): digital scales, hypodermic needles, notebook(s) with what appeared to be drug ledgers, and paraphernalia with black colored residue. The items located in the search provided Sgt. Yount with additional articulable suspicion Mr. Neal may be under the influence of a controlled substance. Sgt. Yount requested Mr. Neal perform standardized field sobriety evaluations. While Sgt. Yount observed signs and symptoms consistent with drug influence, he did not conclude Mr. Neal was impaired (Prelim Trans Pg. 24 Ln 10-13). Mr. Neal was arrested for possession of drug paraphernalia at approximately 1:53 AM.

An initial (at the scene) search of Mr. Neal's person revealed a small piece of cotton, cotton swab, and a large amount of cash. Mr. Neal was Mirandized and had a conversation with Sgt. Yount during transport regarding his meth use. (Prelim Trans. Pg. 26, 27, 28). During the booking process at the jail, a black sock was located inside Mr. Neal's underwear. The sock contained a black, tar like substance Sgt. Yount believed to be heroin; a large piece of a white crystal substance believed to be methamphetamine; and a baggie containing four yellow pills (later identified as hydrocodone). The suspected controlled substances were sent to the Idaho State Police Forensic Lab for testing and returned positive for heroin, 6.9 gms; methamphetamine, 10.92 gms. The pills were not tested.

ARGUMENT:

- I. Sgt. Yount's inquires of the defendant did not impermissibly expand the scope and/or the duration of the stop. The defendant's fourth Amendment rights were not violated.

- II. Sgt. Yount possessed reasonable articulable suspicion of criminal activity in addition to the traffic violations, including, but not limited to, driving while under the influence of drugs.
- III. Sgt. Yount did not unlawfully prolong the detention and did not violate the defendant's fourth amendment rights.

The Defendant claims Sgt. Yount impermissibly extended the investigative detention when the Defendant was detained while Sgt. Yount (a) asked additional questions unrelated to the stop, and (b) waited for a drug detection dog thereby violation the defendant's fourth amendment rights.

The length of an investigative detention was discussed in detail in *State v. Grantham*, 146 Idaho 490, 198 P.3d 128 (Ct. App. 2008) cited by the Honorable Judge Carl Kerrick in his opinion in *State of Idaho v. Kyle Richardson*, CR 2011-0008658

An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *Ramirez*, 145 Idaho at 889, 187 P.3d at 1264; *State v. Roe*, 140 Idaho 176, 181, 90 P.3d 926, 931(Ct.App.2004); *State v. Gutierrez*, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct.App.2002). There is no rigid time limit for determining when a detention has lasted longer than necessary; rather, a court must consider the scope of the detention and the law enforcement purposes to be served, as well as the duration of the stop. *United States v. Sharpe*, 470 U.S. 675, 685—86, 105 S.Ct. 1568, 1574—76, 84 L.Ed.2d 605, 614—15 (1985); *State v. Soukharith*, 253 Neb. 310, 570 N.W.2d 344, 355 (1997). Where a person is detained, the scope of detention must be carefully tailored to its underlying justification. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *State v. Parkinson*, 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct.App.2000). The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. *Ramirez*, 145 Idaho at 889, 187 P.3d at 1264. However, brief inquiries not otherwise related to the initial purpose of the stop do not necessarily violate a detainee's Fourth Amendment rights. *Roe*, 140 Idaho at 181, 90 P.3d at 931. Any routine traffic stop might turn up suspicious circumstances that could

justify an officer asking further questions unrelated to the stop. *State v. Brumfield*, 136 Idaho 913,916,42 P.3d 706, 709 (Ct.App.2001); *State v. Myers*, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct.App.1990). The officer's observations, general inquiries, and events succeeding the stop may—and often do—give rise to legitimate reasons for particularized lines of inquiry and further investigation by an officer. *Id.* Accordingly, the length and scope of the initial investigatory detention may be lawfully expanded if there exist objective and specific articulable facts that justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Id.*

Typically, a reasonable investigation of a traffic stop may include asking for the driver's license and registration, requesting that the driver sit in the patrol car, and asking the driver about his destination and purpose. *Parkinson*, 135 Idaho at 363, 17 P.3d at 307. During the course of a lawfully traffic stop, general questioning on topics unrelated to the purpose of the stop is permissible as long as it does not expand the duration of the stop. *Ramirez*, 145 Idaho at 889, 187 P.3d at 1264; *Stewart*, 145 Idaho at 646—47, 181 P.3d at 1254—55; see also *Muehier v. Mena*, 544 U.S. 93, 101, 125 S.Ct. 1465, 1471,161 L.Ed.2d299, 309 (2005); *Parkinson*, 135 Idaho at 363, 17 P.3d at 307. Brief, general questions about drugs and weapons, in and of themselves, do not extend an otherwise lawful detention. *Parkinson*, 135 Idaho at 362—63, 17 P.3d at 306—07; see also *United States v. Yang*, 345 F.3d 650, 654 (8th Cir.2003); *State v. Aguirre*, 141 Idaho 560, 563, 112 P.3d 848, 851 (Ct.App.2005).

Id. at 496-407, 198 P.3d at 134.

Defendant asserts that Sgt. Yount's continued questioning following the traffic stop improperly expanded the scope, and cites to *U.S. v. Murillo*, 255 F.3d 1169(9th Cir. 2001) and in order to expand the "scope of questions the officer must articulate suspicious factors that are particularized and objective." (Defendant's brief, pg. 3). However, in *Muehler v. Mena*, 544 U.S. 93 (2005), the United States Supreme Court overruled *Murillo* citing to *Florida v. Bostick*, 501 U.S. 429 (1991) holding, "(held repeatedly that) mere police questioning does not constitute a

seizure. Even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage." The Court stated officers did not need reasonable suspicion to ask questions of a suspect, including immigration status.

As in *State v. Brumfield*, 136 Idaho 913 (Ct.App.2001) this traffic stop turned up suspicious circumstances which justified Sgt. Yount asking additional questions unrelated to the original reason for the stop. Sgt. Yount's inquiries of the defendant were based on his observations of defendant's behaviors and appearance as outlined in the Sgt.'s testimony at preliminary hearing (See defendant's Exhibit A attached to defendant's brief in support of motion to suppress). Sgt. Yount has specific training in the area of narcotics investigations as well as prior experience as a drug recognition expert. Further, while writing a citation for lack of insurance, Sgt. Yount was advised the defendant was currently on active probation in Washington, and also noted the address provided by the defendant was different than what appeared on defendant's paperwork. (Prelim Trans. Pg. 16 and 17). When Officer Chris Reese of Lewiston Police Department arrived on scene with his K-9 at approximately 1:07 AM, Sgt. Yount was preparing the tint meter, to check the allowable visibility on the windows, one of the original reasons for the traffic stop.

The defendant also argues the factors articulated by Sgt. Yount have been dismissed by the courts as "circumstances describing a very large category of presumably innocent travelers, who would be subject to virtually random seizures"

Reid v. Georgia, 448 U.S. 438 (Defendant's brief pg. 13) The Reid case involved the use of "profiling". In that case, the appellate court's conclusion:

that the DEA agent reasonably suspected the petitioner of wrongdoing rested on the fact that the petitioner appeared to the agent to fit the so-called "drug courier profile," a somewhat informal compilation of characteristics believed to be typical of persons unlawfully carrying narcotics. Specifically, the court thought it relevant that (1) the petitioner had arrived from Fort Lauderdale, which the agent testified is a principal place of origin of cocaine sold elsewhere in the country, (2) the petitioner arrived in the early morning, when law enforcement activity is diminished, (3) he and his companion appeared to the agent to be trying to conceal the fact that they were traveling together, and (4) they apparently had no luggage other than their shoulder bags.

The U.S. Supreme Court concluded the agent could not, as a matter of law, have reasonably suspected the petitioner of criminal activity on the basis of these observed circumstances. Of the evidence relied on, only the fact that the petitioner preceded another person and occasionally looked backward at him as they proceeded through the concourse relates to their particular conduct. The other circumstances describe a very large category of presumably innocent travelers, who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure. Nor can we agree, on this record, that the manner in which the petitioner and his companion walked through the airport reasonably could have led the agent to suspect them of wrongdoing. Although there could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot, see *Terry v. Ohio*, *supra*, at 27-28, this is not such a case. The agent's belief that the petitioner and his companion were attempting to conceal the fact that they were traveling together, a belief that was more an "inchoate and unparticularized suspicion or 'hunch,'" 392 U.S., at 27, than a fair inference in the light of his experience, is simply too slender a reed to support the seizure in this case.

In this case, the observations made by Sgt. Yount have nothing to do with profiling and in fact provided Sgt. Yount with reasonable, and articulated, suspicion that more was going on than met the eye in the way of criminal activity, the very least of which may be driving while under the influence.

Defendant questions the veracity of Sgt. Yount's observations as testified to during the preliminary hearing. Defendant alleges Sgt. Yount's observations do not comport with the in car video depiction of the events. However, defendant fails to note the in car video system provides only a distant view of the circumstances and does not have any type of zoom or close up capabilities. Much like an observer of a sporting event on television, until the cameras zoom in on the individual players, the viewer is only provided with an overall view of the action occurring on the field/court. When the camera zooms in on individuals the viewer is able to see the determination, sweat, and facial expressions of the individual player. Sgt. Yount was up close, the in car camera was not. Sgt. Yount was under oath when testifying and told the court of his observations of the defendant during the encounter.

Defendant goes on to dissect each and every factor articulated by Sgt. Yount on an individual basis, citing to cases from the 6th Circuit, the 8th Circuit, the 10th Circuit, the 11th Circuit, and finally returning to Reid, a case substantially factually different than the case before this court.

"The Fourth Amendment to the United States Constitution, and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. Under the Fourth Amendment, an investigative detention is a permissible seizure, if it is based on specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *****4** *Terry v. Ohio*, 392 U.S. 1, 26, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Sheldon*, 139 Idaho

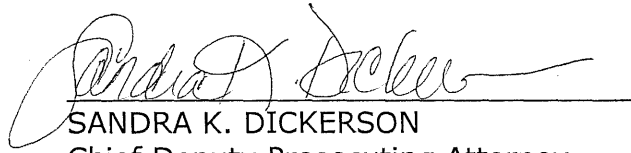
980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). The quantity and quality of information necessary to create reasonable suspicion for such a "*Terry* stop" is less than that necessary to establish probable cause, *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990) and *State v. Bishop*, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009), but must be more than a mere hunch or unparticularized suspicion. *Terry*, 392 U.S. at 27. The justification for an investigative detention is evaluated upon the totality of the circumstances then known to the officer. *Sheldon*, 139 Idaho at 983, 88 P.3d at 1223. Further, to meet the constitutional standard of reasonableness, an investigative detention must not only be justified by reasonable suspicion, but must also be reasonably related in scope to the circumstances that justified the stop in the first place. *Id.*" *State v. Grigg*, 149 Idaho 361 (Ct. App. 2010)

Under the totality of the circumstances test articulated by the Court in *Grigg*, the detention of the defendant in this case was not unlawfully extended in any circumstance. Taken individually, as defendant would ask this court to do, the factors may indeed not rise to a reasonable suspicion level, but taken in total, the factors more than provide reasonable suspicion for the investigatory detention.

CONCLUSION:

In the case at hand, Sgt. Yount cited to facts which established, under the totality of the circumstances test, he had reasonable articulable suspicion to detain the Defendant for purposes of further investigation into criminal activity. The investigation was not unlawfully extended. Therefore, the Defendant's motion to suppress should be denied.

RESPECTFULLY SUBMITTED this 23rd day of September, 2014.


SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS was

- (1) if hand delivered, or
- (2) _____ hand delivered via court basket, or
- (3) _____ sent via facsimile, or
- (4) _____ mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory R. Hurn
Kwate Law Office
1502 "G" Street
Lewiston, ID 83501

DATED this 23rd day of September, 2014.


ERIN D. LEAVITT
Senior Legal Assistant

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Status/Scheduling Conference

Hearing date: 10/1/2014

Time: 9:37 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

93707 Def present for status/sched conf, motion hearing needs set. Crt q counsel re evidence or just argument.

State no evidence.

Mr. Hurn will have evidence.

Crt sets 10/29 at 11:00 to hear pretrial motions and presentation of any further evidence.

JMB

FILED

2014 OCT 15 PM 4 11

11:20 10/10/14

State of Idaho PATTY O. WEEKS
Nez Perce County Sheriff CLERK OF THE DIST. COURT
Civil Division
Lewiston, ID 83501 DEPUTY

Process Number: 14-C2959

Court Number: CR201403285

I, Joe Rodriguez, of Nez Perce County Sheriff do hereby certify that I received the within and foregoing Subpoena-Criminal on 9th day of October, 2014, and that I served the same on:

KENNETH ALEXANDER YOUNT
2700 FRONTAGE RD
Lewiston, ID 83501

(Witness)

Served on: 10th day of October, 2014 at 10:02:00

by Florence JL
Witness

Served to: kenneth yount
2700 FRONTAGE RD
Lewiston, ID 83501

Returned on the 10th day of October, 2014

I also certify that I endorsed on the said copy the date of service, signed my name, and added my official title thereto.

Dated the 10th day of October, 2014

Fees:

Service:	0.00
Mileage:	0.00
Other :	0.00
Total :	0.00

Joe Rodriguez, Sheriff
Nez Perce County Sheriff, Idaho

BY: *[Signature]*
Authorized Representative
Civil Division

ORIGINAL 188

ATTENTION:

Please call 1-208-746 60 **ON THE DAY**
BEFORE you are to appear in Court, to confirm that
trial and/or hearing is still on the Court Schedule.

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE**

State of Idaho

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03285

SUBPOENA

14-02959
RECEIVED
HOUR 1319 A.M. P.M.

OCT 09 2014

NEZ PERCE COUNTY SHERIFF'S OFFICE
LEWISTON, IDAHO 83501

BY: *[Signature]*

THE STATE OF IDAHO TO: **Ken Yount**
Idaho State Police
Lewiston, Idaho 83501

You are hereby commanded to appear before the above entitled court at Lewiston, Idaho, on
the **29th** day of **October, 2014**, at **11:00 o'clock a.m.** as a witness in the above entitled action.

You are further commanded to bring with you the following items and documents: All files,
reports and documentation relating to the above named individual.

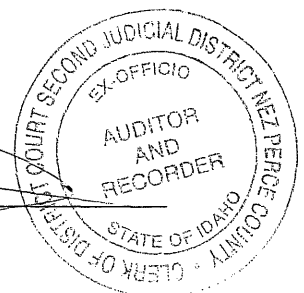
You are further notified that if you fail to appear at the place and time specified above, that
you may be held in contempt of the court and that the aggrieved party may recover from you the sum
\$100 and all damages which he may sustain by your failure to attend as a witness.

DATED this 8th day of October, 2014.

BY ORDER OF THE COURT.

PATTY O. WEEKS,
Clerk of the District Court

[Signature]
Deputy



ORIGINAL 189

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Pretrial Motions/def mtn suppress

Hearing date: 10/31/2014

Time: 10:36 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: NO COURT REPORTER PRESENT

Minutes Clerk: TERESA

Tape Number: CRTRM 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

- 103631 Defendant present, in custody, with counsel.
- 103650 Court addresses counsel.
- 103727 Ms. Dickerson addresses the Court and parties stipulate to admission of video.
- 103755 Mr. Hurn calls Sergeant Ken Yount, sworn, Mr. Hurn begins direct examination.
- 105803 Ms. Dickerson begins cross examination Sergeant Ken Yount.
- 111155 Mr. Hurn begins redirect examination Sergeant Ken Yount.
- 111420 Court addresses Sergeant Ken Yount. Sergeant Ken Yount responds.
- 111535 Mr. Hurn questions Sergeant Ken Yount is light of the Court's questioning.
- 111615 Ms. Dickerson has nothing further. Witness steps down.
- 111652 Mr. Hurn presents argument.
- 112739 Ms. Dickerson presents argument.
- 113120 Mr. Hurn responds.
- 113309 Court takes matter under advisement and will issue written decision.
- 113323 Court recess.



COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Final Pretrial

Hearing date: 11/5/2014

Time: 10:56 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Justin Coleman

105617 Def present for final pt conf.

Crt reviews file. Crt has not rendered decision yet on motions.

Crt sets another final pt conf on 11/12 at 11:00.

A handwritten signature in black ink, appearing to read "Jeff M. Brudie", is located in the lower right quadrant of the page.

FILED
2014 NOV 7 AM 10 49

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZPERCE**

STATE OF IDAHO,)	
	)	CASE NO. CR14-03285
Plaintiff,)	
	)	OPINION AND ORDER
v.	)	ON DEFENDANT'S MOTION
	)	TO SUPPRESS
BRIAN E. NEAL,)	
)	
Defendant.)	

This matter is before the Court on Defendant's Motion to Suppress. A hearing on the Motion was held on October 31, 2014. Defendant Neal was represented by attorney Gregory R. Hurn. The State of Idaho was represented by deputy prosecutor Sandra K. Dickerson. The Court, having read the Motion and briefs filed by the parties, having heard the oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL BACKGROUND

On April 24, 2014, while on a separate law enforcement contact in the Dynamart parking area at 12:30 a.m., Idaho State Police Trooper Ken Yount observed an unoccupied vehicle parked at a gas pump that appeared to have windows tinted darker than allowed by Idaho law. After completing the contact, Trooper Yount parked a short distance away and began performing

stationary patrol. At approximately 12:40 a.m., he observed what he believed to be the same vehicle drive past his location. Trooper Yount pulled in behind the vehicle and began following it across the Clearwater Bridge toward Lewiston. While doing so, he observed the driver change lanes without signaling. Trooper Ken Yount conducted a stop of the vehicle for failing to signal when merging, failing to signal a lane change, and for window tinting darker than allowed by law.

The trooper made contact with the driver and sole occupant of the vehicle, identified by his driver's license as Brian E. Neal. Upon making contact, the trooper stated he noticed Neal's face was wet with sweat, his left leg was bouncing steadily, he appeared to have difficulty sitting still, and his speech was quick or rapid. The trooper asked Neal why he was sweating, given that the outside temperature was approximately 45 degrees. Neal told the trooper he was anxious about being pulled over and that he suffers from anxiety attacks that cause him to sweat, talk fast, and be jittery. After Neal provided the trooper with his registration and proof of insurance, the trooper noted Neal's insurance was expired. The trooper also commented on the design on Neal's t-shirt, which appeared to be a marijuana leaf behind the Seattle space needle.

The trooper, citing his training as a drug recognition expert and Neal's overall appearance, testified at the hearing that he suspected Neal was under the influence of a central nervous system drug. Trooper Yount informed Neal he was going to cite him for an insurance violation and asked if he could search Neal's vehicle once the citation was issued. Neal denied the trooper's request to search, after which the trooper informed Neal he intended to have a narcotics detection K-9 respond to the scene. The trooper had Neal get out of his car and stand near the trooper's patrol vehicle while the trooper contacted dispatch and requested a K-9 unit.

About that time, another trooper arrived. Trooper Yount asked the second trooper to stand near Neal so that Yount could work on writing Neal's citation.

Trooper Yount contacted dispatch to determine Neal's driving status and criminal history and learned Neal was on probation in Washington State. The trooper returned to where Neal was standing and asked if he was on probation. Neal replied he had been released from probation after serving prison time for bank robbery. Trooper Yount testified he was unable to confirm whether Neal was actively on probation or had been released as stated by Neal. As Trooper Yount was preparing his window tint meter, Lewiston Police Officer Reese and his narcotics dog arrived on scene. Trooper Yount and Officer Reese discussed the situation and, while Trooper Yount was checking the tint on Neal's windows, Officer Reese explained to Neal the process of deploying his narcotics dog around the vehicle.

After sending his K-9 around Neal's vehicle, Officer Reese informed Trooper Yount his dog had alerted to the odor of drugs. At that point, Trooper Yount made the decision to search Neal's vehicle without a warrant. The officers found a digital scale with white crystal residue, a tin measuring cup with black residue, hypodermic needles, two notebooks or notepads with names and numbers, and Neal's wallet containing \$1,677.00. Trooper Yount arrested Neal for possession of drug paraphernalia and transported him to the Nez Perce County jail. During the booking process, jail staff found a black sock in Neal's underwear that they gave to Trooper Yount to inspect. Inside the sock was a plastic baggy with a black tar-like substance believed to be heroin, a second plastic baggy that contained a large piece of a white crystal substance believed to be methamphetamine, and a third plastic baggy with four yellow pills later identified as hydrocodone.

On August 1, 2014, after being bound over to the District Court following a preliminary hearing, Defendant Neal filed a Motion to Suppress. The Defendant asserts in his Motion that the trooper lacked reasonable suspicion to expand the scope and duration of the stop, and therefore, the warrantless search of his vehicle was illegal and all evidence seized must be suppressed.

STANDARD OF REVIEW

The Fourth Amendment to the United States Constitution and Article I, § 17 of the Idaho Constitution prohibit unreasonable searches and seizures.

Warrantless searches are presumed to be unreasonable unless they fall within one of several narrowly drawn exceptions. *State v. Gallegos*, 120 Idaho 894, 897, 821 P.2d 949, 952 (1991). One of those exceptions, the “automobile exception,” allows police to search a vehicle without a warrant when there is probable cause to believe the vehicle contains contraband or evidence of a crime. *State v. Buti*, 131 Idaho 793, 800, 964 P.2d 660, 667 (1998). Probable cause is established when the totality of the circumstances known to the officer at the time of the search would give rise—in the mind of a reasonable person—to a fair probability that contraband or evidence of a crime will be found in a particular place. *State v. Josephson*, 123 Idaho 790, 792–93, 852 P.2d 1387, 1389–90 (1993). Probable cause is a flexible, common-sense standard, and a practical, nontechnical probability that incriminating evidence is present is all that is required. *Texas v. Brown*, 460 U.S. 730, 742, 103 S.Ct. 1535, 1543, 75 L.Ed.2d 502, 513–14 (1983).

A reliable drug dog's alert on the exterior of a vehicle is sufficient, in and of itself, to establish probable cause for a warrantless search of the interior. *State v. Tucker*, 132 Idaho 841, 843, 979 P.2d 1199, 1201 (1999). The U.S. Supreme Court has held that probable cause to believe a vehicle contains evidence of criminal activity “authorizes a search of any area of the vehicle in which the evidence might be found.” *Arizona v. Gant*, 556 U.S. 332, 347, 129 S.Ct. 1710, 1721, 173 L.Ed.2d 485, 498 (2009) (citing *United States v. Ross*, 456 U.S. 798, 820–21, 102 S.Ct. 2157, 2170–71, 72 L.Ed.2d 572, 590–91 (1982)).

State v. Anderson, 154 Idaho 703, 706, 302 P.3d 328 (2012).

When a decision on a motion to suppress is challenged, appellate courts accept the trial court's findings of fact that are supported by substantial evidence, but freely review the

application of constitutional principles to the facts as found by the lower court. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996). “At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court.” *State v. Stone*, 2013 WL 1955792 (Ct.App.2013); citing *State v. Valdez–Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct.App.1999).

ANALYSIS

Defendant Neal contends that at the time of the stop, Trooper Yount was without reasonable suspicion of criminal activity and, therefore, unreasonably prolonged Neal’s detention merely to allow time for an off-duty officer and his narcotics dog to arrive at the scene. The parties do not dispute the time line of events as recorded on Trooper Yount’s dashboard camera.

Trooper Yount stopped Defendant Neal’s vehicle at approximately 12:41 a.m. Neal provided the trooper with his driver’s license at 12:42:16. Additional conversation occurred between Neal and the trooper regarding Neal’s apparent nervousness, sweating, and anxiety disorder. Toward the end of the conversation, at approximately 12:46, the trooper asked Neal if he would consent to the trooper searching his vehicle. When Neal did not consent, as was his right, Trooper Yount informed him he was going to request a K-9 unit respond to the scene. At 12:47, Trooper Yount detained Neal and ordered him out of his vehicle while the trooper requested a K-9 unit. At 12:50, the trooper contacted dispatch to request a criminal background check and driver’s license status on Neal and asked if a K-9 unit was in route.

At 12:54 Trooper Yount had telephone contact with the K-9 unit and at 1:07 the K-9 unit arrived on scene and began preparation to deploy the drug dog around Neal’s vehicle. At 1:08, Trooper Yount began checking the tint level of Neal’s vehicle. At 1:11 the narcotics dog was

deployed around the vehicle and at 1:12, the officer with the K-9 informed Trooper Yount the dog had alerted on the vehicle for the presence of drug odors. A search of Neal's vehicle was subsequently conducted by the officers on scene. After a search revealed drug paraphernalia, Neal was placed under arrest at 1:53 a.m. Approximately seventy-two (72) minutes elapsed between the stop of Neal's vehicle and his arrest.

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286. An investigative stop must be justified by a reasonable suspicion, derived from specific articulable facts, that the detained person has committed or is about to commit a crime. *Florida v. Royer*, 460 U.S. 491, 498 (1983); *State v. Fry*, 122 Idaho 100, 103, 831 P.2d 942, 945 (Ct.App.1991). The determination of whether an investigative detention is reasonable requires a dual inquiry—whether the officer's action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *State v. Parkinson*, 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct.App.2000). An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *State v. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct.App.2003). The scope of an investigatory detention may be expanded if objective and specific articulable facts exist to justify the suspicion that a detained person is engaged in criminal activity. *State v. Grantham*, 146 Idaho 490, 496, 198 P.3d 128, 134 (Ct.App.2008).

The initial stop of Defendant Neal by Trooper Yount was lawful, as the trooper observed Neal fail to signal a lane change. An infraction committed in view of a police officer creates

sufficient reason for an officer to conduct a traffic stop. The Court agrees with the Defendant's position that the time necessary to cite a driver for such an infraction is of short duration.¹ However, the purpose of a stop is not fixed at the time the stop is initiated. *State v. Perez-Jungo*, 156 Idaho 609, 329 P.3d 391, 396 (Ct.App.2014). Therefore, the Court must next determine whether, under the totality of the circumstances, there was reasonable suspicion for Trooper Yount to expand his investigation far beyond the infraction that was the basis for the stop. "[A] detention initiated for one investigative purpose may disclose suspicious circumstances that justify expanding the investigation to other possible crimes." *Id.*

During the hearing in this matter, Trooper Yount testified that, upon making contact with Defendant Neal, he immediately noticed Neal's face and forehead were wet with sweat even though it was only about 45 degrees outside, his left leg was bouncing steadily, he appeared to have difficulty sitting still, he avoided eye contact, and his speech was rapid. The trooper also noted Neal was wearing a t-shirt that had a picture of a marijuana leaf behind the Seattle Space Needle. The trooper testified that he had training as a drug recognition expert and that Neal's physical appearance and behavior caused him to suspect Neal was driving under the influence of drugs and that he was attempting to conceal something illegal. "An officer may draw reasonable inferences from the facts in his or her possession to support reasonable suspicion, and those inferences may be drawn from the officer's experience and law enforcement training." *State v. Perez-Jungo*, 156 Idaho 609, 329 P.3d 391, 397 (Ct.App.2014), citing *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct.App.1988).

The Court finds it troubling that Trooper Yount's actions at the time of the stop are inconsistent with his articulated suspicion and that a review of the video belies the trooper's

¹ In the instant matter, Trooper Yount testified it takes four to five minutes to write a citation and takes one to two minutes to prepare his window tint meter for use.

description of Neal's physical appearance and behavior. On the video, Neal exhibits no jittery behavior and is instead seen standing quite still for a significant period of time. Neal explains more than once that he takes medication for anxiety, that his anxiety causes him to talk fast, sweat, and appear nervous, and that he has not taken his medication for several days as he left it at his home in Washington State.² Neal also appears chilled, as he retrieves a jacket from his car and puts it on after standing outside for several minutes.

Trooper Yount testified he suspected Neal was driving under the influence of drugs, yet he took no investigative action to confirm or dispel his suspicion.³ While waiting for the K-9 unit to arrive, Trooper Yount conducted no field sobriety testing, did not request a drug recognition expert ("DRE"), nor conduct any drug recognition tests himself. Instead, Trooper Yount requested an off-duty K-9 unit respond on what can only be characterized as hunch or speculation in order to provide some basis to perform a warrantless and presumptively unreasonable search. Neal's nervous behavior, attire, and refusal to consent to a search of his vehicle certainly provided no factual basis to support any reasonable suspicion of drug activity. "Because it is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity, a person's nervous demeanor during such an encounter is of limited significance in establishing the presence of reasonable suspicion." *State v. Gibson*, 141 Idaho 277, 285–86, 108 P.3d 424, 432–33 (Ct.App.2005), *see also State v. Zuniga*, 143 Idaho 431, 435, 147 P.3d 697, 701 (2006).

² On the video, Trooper Yount repeatedly asks Neal if he has illegal drugs, firearms, or other weapons in the vehicle and repeatedly asks why he is nervous and sweating. When Neal continuously explains he has an anxiety disorder and is nervous because of the trooper's questions, Yount tells Neal he is just asking him simple questions. The Court finds Yount's response disingenuous. While such questions may be routine for Trooper Yount, to a motorist stopped for a very minor infraction, the repeated questions are understandably perceived, coming from someone in a position of authority, as accusatory and totally unrelated to the reason for the stop.

³ Trooper Yount testified that he requested Neal perform field sobriety tests, but not until after he had searched Neal's vehicle.

Neal had a valid driver's license, no warrants, and a criminal history that contributed nothing to a reasonable belief that he was, or was about to be, engaged in criminal activity. Neal explained that he suffers from anxiety and gave the trooper the names of specific medications he takes for the disorder. Trooper Yount articulated no facts beyond his perception that Neal appeared nervous to support reasonable suspicion to expand the scope and duration of the stop to include investigating Neal for drug activity. The Court finds it telling that Trooper Yount never completed a citation for the observed moving infractions or the failure to provide proof of insurance, lending weight to the only conclusion the facts allow this Court to reach, that being that Trooper Yount unlawfully extended the stop to buy time for a narcotics dog to arrive in hopes of confirming a speculative hunch that Neal possessed drugs.

An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *State v. Gutierrez*, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct.App.2002). Where a person is detained, the scope of detention must be carefully tailored to its underlying justification. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *Parkinson*, 135 Idaho at 361, 17 P.3d at 305. In this regard, we must focus on the intensity of the detention, as well as its duration. *Roe*, 140 Idaho at 181, 90 P.3d at 931. The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. *Id.*; *Parkinson*, 135 Idaho at 361, 17 P.3d at 305.

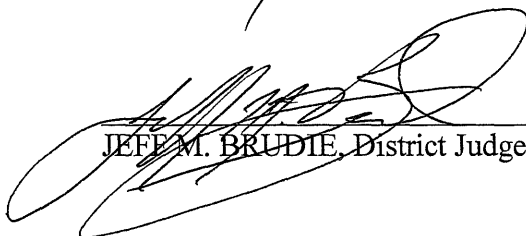
State v. Perez-Jungo, 320 P.3d at 398-399.

There was a lapse of twenty-six minutes between the time Neal was stopped for committing various infractions and the arrival of the K-9 unit. Yet during this time, Trooper Yount failed to complete any citations and failed to request field sobriety testing. Given the totality of the circumstances, the Court finds there were insufficient facts to support a reasonable suspicion of drug activity and therefore, Trooper Yount unlawfully extended the scope and duration of the stop based solely on speculation.

ORDER

The Motion to Suppress filed by Defendant Neal is hereby GRANTED.

Dated this 7 day of November 2014.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON MOTION TO SUPPRESS was:

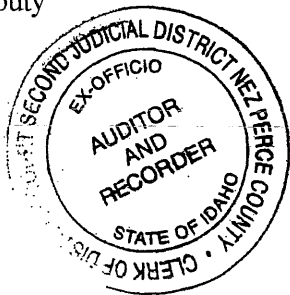
_____ DELIVERED by the undersigned at Lewiston, Idaho, this 7 day of November 2014, to:

Greg Hurn

Sandra Dickerson

PATTY O. WEEKS, CLERK

By: 
Deputy



ORIGINAL

DANIEL L. SPICKLER
Nez Perce County Prosecuting Attorney

SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney
Post Office Box 1267
Lewiston, Idaho 83501
Telephone: (208) 799-3073
I.S.B.N. 4968

FILED

2014 NOV 10 PM 4 07

PATTY O. WEEKS
CLERK OF THE DIST. COURT.

m. Cole
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

BRIAN E. NEAL,

Defendant.

CASE NO. CR2014-0003285

MOTION FOR RECONSIDERATION

COMES NOW, SANDRA K. DICKERSON, Chief Deputy Prosecuting Attorney, for Nez Perce County, State of Idaho, and moves this Court to reconsider the Opinion and Order filed on November 7, 2014, suppressing the evidence in this case.

This Motion is being made based upon Defendant's diminished expectation of privacy as a result of his active parole/probation status in the State of Washington. *Samson v. California*, 547 U.S. 843 (2006); *United States v. Knights*, 534 U.S. 112 (2001); and *State v. Gawron*, 112 Idaho 841 (1987). Given the defendant's active parole/probation status as relayed by dispatch to Sgt. Yount, a search of the defendant's vehicle would have been justified without reasonable suspicion, "Imposing a reasonable suspicion requirement" on the ability to search a parolee "would give parolees greater opportunity to anticipate searches and conceal criminality." *Samson*, 547 U.S. at 854. Although *Samson* involved actions taken

MOTION FOR RECONSIDERATION 1 203

pursuant to a statute that permitted suspicionless searches, the holding of the case stands for a broader proposition: these types of searches do not violate the Fourth Amendment.

The State respectfully requests the Court reconsider its decision to suppress the evidence.

DATED this 10th day of November 2014.



SANDRA K. DICKERSON
Chief Deputy Prosecuting Attorney

AFFIDAVIT OF SERVICE

I declare under penalty of perjury that a full, true, complete and correct copy of the foregoing MOTION FOR RECONSIDERATION was

- (1) e hand delivered, or
- (2) hand delivered via court basket, or
- (3) sent via facsimile, or
- (4) mailed, postage prepaid, by depositing the same in the United States Mail.

ADDRESSED TO THE FOLLOWING:

Gregory Hurn
Kwate Law Offices
1502 G Street
Lewiston, ID 83501

DATED this 10th day of November 2014.



ERIN D. LEAVITT
Senior Legal Assistant

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Final Pretrial

Hearing date: 11/12/2014

Time: 11:36 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

113609 Def present for final pt conf. State filed mtn to reconsider. Crt reviews previous hearing and ruling of the court. Crt reviews motion to reconsider filed by the State.

113716 Mr. Hurn just received motion and has not had time to respond to it yet. State would like to address motion. If court does reconsider, the State is prepared to go forward on Monday with trial. If the court does not reconsider, then the State requests proceedings be stayed pending appeal. State relays Def does have a hold from WA IDOC, so if this Court releases him, he will be transferred to WA.

Crt will stay proceedings pending notice of appeal from the State. Crt will authorize release of hold here so he can proceed to WA. Crt will proceed with motion to reconsider. Def does not need to be present for motion to reconsider.

State q Crt re trial.

Crt will vacate trial.

Mr. Hurn relays Def will not waive speedy trial rights and is also prepared to go to trial on Mon.

Crt relays trial can go forward on Monday.

Mr. Hurn q Crt re when court will address mtn to reconsider.

Crt has no time to hear motion prior to Mon.

Mr. Hurn relays trial can be vacated then but relays Def will not waive speedy trial.

Crt vacates trial setting on Mon.

State relays she is not available Thanksgiving week.

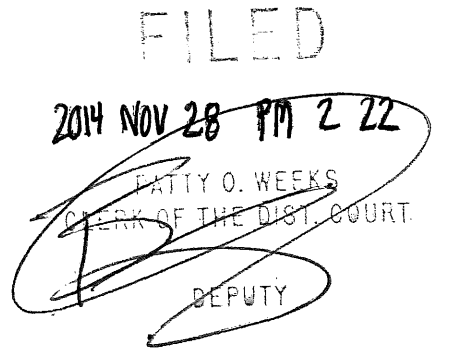
Crt sets mtn for reconsider on 12/3 at 11:00.

Crt will release hold on Def from custody on this charge and he can be sent to WA for their hold.

A handwritten signature in black ink, appearing to be 'Jeff M. Brudie', is located in the lower right quadrant of the page.

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar #8753

Attorney for Defendant



ORIGINAL

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-03285
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S RESPONSE TO
	)	STATE'S MOTION FOR
	)	RECONSIDERATION
Brian E. Neal,)	
)	
Defendant.)	
)	

COMES NOW the Defendant, Brian E. Neal, by and through his attorney of record, Gregory R. Hurn of Kwate Law Offices, PLLC, and hereby submits this response to the State's Motion for Reconsideration (hereafter referred to as "the State's Motion"):

ARGUMENT

The State's Motion fails to address the reasoning for the Court's Opinion and Order on Defendant's Motion to Suppress. Specifically, the State's Motion fails to recognize that the search of Defendant's vehicle occurred twenty six (26) minutes after Defendant's seizure through Trooper Yount's traffic stop of Defendant. That the Trooper Yount's seizure of the Defendant unlawfully

DEFENDANT'S RESPONSE TO STATES MOTION
FOR RECONSIDERATION

extended the scope and duration of the traffic stop based solely on speculation. The unlawful extension of the scope and duration of the traffic stop is the genesis of the violation of Defendant's constitutional rights which resulted in the suppression of evidence illegally obtained.

CONCLUSION

The evidence seized in Defendant's vehicle and on his person were unlawfully obtained as a direct result of a seizure and prolonged detention that violated Neal's Fourth Amendment rights. Since the evidence seized was based upon an unlawful detention, it must be suppressed as fruits of the poisonous tree. Accordingly, the Defendant respectfully requests this Court to deny the State's Motion for Reconsideration.

DATED this 28th day of November, 2014.

KWATE LAW OFFICES, PLLC

By 

Gregory R. Hurn

CERTIFICATE OF SERVICE

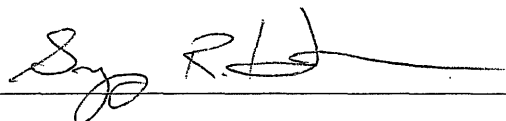
I hereby certify that on the 28th day of November, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Sandra K. Dickerson
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC.

By 
Gregory R. Hurn

COURT MINUTES

CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Hearing type: Hearing on Motions

Hearing date: 12/3/2014

Time: 11:15 am

Judge: Jeff M. Brudie

Courtroom: 1

Court reporter: Linda Carlton

Minutes Clerk: JANET

Tape Number: 1

Defense Attorney: Kwate Law Office PD 2014

Prosecutor: Sandra Dickerson

111525 Def not present for motion to reconsider suppression of evidence. Crt reviews file. Crt was also provided with an affidavit from Def, which he has also reviewed.

111742 State presents argument.

112132 Crt q State re this being a probable search.

State no, but was reasonable to stop and question.

State continues.

112255 Mr. Hurn presents argument.

112923 Crt q State re charge.

Mr. Yount was told it was a robbery.

112956 State presents rebuttal argument.

113143 Crt will take under advisement.

FILED

2014 DEC 11 AM 10 25

PATTY O. WEEKS
CLERK OF THE DIST. COURT.


DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZPERCE**

STATE OF IDAHO,)	
	)	CASE NO. CR14-03285
Plaintiff,)	
	)	OPINION AND ORDER
v.	)	ON THE STATE'S MOTION
	)	FOR RECONSIDERATION
BRIAN E. NEAL,)	
)	
Defendant.)	
_____)	

This matter is before the Court on the State's Motion for Reconsideration. A hearing on the Motion was held on December 3, 2014. Defendant Neal was represented by attorney Gregory R. Hurn. The State of Idaho was represented by deputy prosecutor Sandra K. Dickerson. The Court, having read the Motion, affidavit, and briefs filed by the parties, having heard the oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

On November 7, 2014, this Court entered an Opinion and Order in this matter granting Defendant Neal's Motion to Suppress. The Motion was granted after the Court found the totality of the circumstances did not evidence sufficient facts to support a reasonable suspicion of

criminal activity and, as a result, the scope and duration of the stop was unlawfully extended based on mere speculation by the officer. On Motion for Reconsideration, the State asserts the Court erred, arguing the totality of the circumstances gave rise to a reasonable suspicion on the part of the officer that criminal activity was afoot and, therefore, the Court should reverse its earlier decision.

The State offers the Court no additional facts not already considered by the Court. However, the State correctly notes that the Court was in error when it stated the officer at no time issued Neal a citation for failure to provide proof of insurance. After a more careful review of the file, the Court notes an electronic citation for the infraction was in fact issued. However, it is unclear whether the citation was written before or after the search of Neal's vehicle, as the times that appear on the infraction citation are the same as the times that appear on the citation for misdemeanor possession of drug paraphernalia and felony possession of hydrocodone, items that were discovered only after the search of Neal's vehicle.¹ Therefore, the Court finds the discrepancy over the issuance of the infraction citation of little consequence to the Court's analysis of the totality of the circumstances.

After reconsidering the totality of the facts in this matter, the Court continues to be of the opinion that the scope and duration of the stop were unlawfully extended beyond any time reasonably necessary. Despite testifying that he suspected Neal was driving under the influence of drugs, Trooper Yount conducted no investigation to confirm or dispel such a suspicion until after the drug dog had arrived and Neal's vehicle had been searched without a warrant. The

¹ The infraction insurance offense was issued on ISP Citation No. 0283512. In the upper left-hand portion of the citation a time of 12:53 AM appears and in the lower left-hand portion of the citation a time of 12:41 AM appears. The same times appear in the relevant locations on ISP Citation No. 283513, which was issued for the misdemeanor and felony offenses that were the result of the search of Neal's vehicle. The drug dog was deployed around Neal's vehicle at 1:11 AM and the search of Neal's vehicle conducted shortly after 1:11 AM. Because the times on the citations are earlier than the time of the vehicle search, the times that appear on the two citations are either inaccurate or have no relation to the time the citations were issued.

State emphasized during oral arguments on its Motion the fact that Neal was on probation in Washington State at the time of the stop, contrary to Neal's assertions to Trooper Yount. However, the State conceded upon questioning from the Court that the search could not be justified as a probationary search, as no efforts were made to contact Washington State Probation and Parole to determine whether a search by a law enforcement officer was permitted under the terms and conditions of Neal's probation.

ORDER

The State's Motion for Reconsideration is hereby DENIED.

Dated this 12 day of December 2014.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON STATE'S MOTION FOR RECONSIDERATION was:

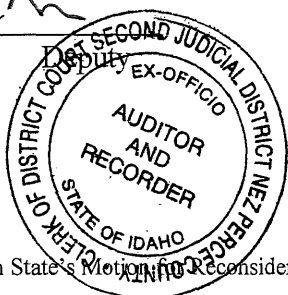
✓ DELIVERED by the undersigned at Lewiston, Idaho, this 11 day of December 2014, to:

Gregory Hurn, Defense Counsel

Sandra Dickerson, Prosecutor

PATTY O. WEEKS, CLERK

By: 



FILED

2014 DEC 11 AM 10 32

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar #8753

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,

Plaintiff,

vs.

Brian E. Neal,

Defendant.

Case No. CR 2014-03285

AFFIDAVIT OF DEFENDANT

BRIAN E. NEAL after being first duly sworn on oath, deposes and says that:

1. I am the defendant in the above-entitled matter.
2. I was on Community Custody with the State of Washington Department of Corrections on April 24, 2014.
3. Attached to this affidavit is a true and correct copy of my Conditions, Requirements, and Instructions for Department of Corrections, Washington State.

AFFIDAVIT OF DEFENDANT

1

ORIGINAL

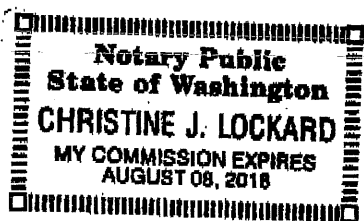
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 2nd day of December, 2014.

Brian E. Neal
Brian E. Neal

STATE OF Washington : ss.
County of Benton)

SUBSCRIBED AND SWORN to before me this 2nd day of December, 2014.



Christine J. Lockard
Notary Public for Washington
Residing at Kennelworth, Oregon
My commission expires: 8/8/2018

CERTIFICATE OF SERVICE

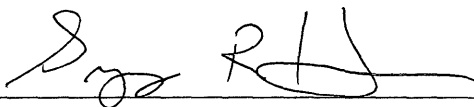
I hereby certify that on the 3rd day of December, 2014, a true and correct copy of the foregoing instrument was:

☐ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Sandra K. Dickerson
Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

KWATE LAW OFFICES, PLLC

By 

Gregory R. Hurn



CONDITIONS, REQUIREMENTS, AND INSTRUCTIONS

Offender NEAL, Brian E.	DOC # 324024	FOS#	County/Cause # King 10-1-06060-6(AB) (SEA)
----------------------------	-----------------	------	---

State:

Interstate Compact Supervision Type: ☐ Parole ☐ Probation ☐ Special:

- I understand that under the provisions of RCW 9.94A or 9.95 or 9.95.270 or 10.77, I am subject to all conditions and requirements the court/Indeterminate Sentence Review Board/Department of Corrections (DOC) has imposed and that the terms of supervision can be revoked, modified, or changed at any time during the course of supervision. Furthermore, I understand that I am under the supervision of the Department of Corrections and that I must comply with the instructions of the Department herein. Should I violate any of these conditions, requirements, or instructions, I understand that I will be sanctioned by the court/Indeterminate Sentence Review Board/DOC Hearing Officer if I am found to have committed the violation(s). I have signed and received a copy of DOC 09-274 Offender Notification of Department Violation Process.

Sign with initials

STANDARD CONDITIONS:

- Secure written permission from the Community Corrections Officer (CCO) before leaving Washington State.
- Remain within a geographic area as directed by the DOC as follows:
- Obtain written permission from the CCO before traveling outside the county in which you reside, unless advised in writing by the CCO that it is not necessary to do so.
- Notify the CCO before changing residence or employment.
- If your sex offense was committed on or after 6/6/96, with a minor child victim, you must avoid contact with victim or minor children of similar age or close proximity where minors congregate, UNLESS authorized by the CCO.
- Abide by written or verbal instructions issued by the CCO.
- Abide by any DOC imposed conditions (or court/Indeterminate Sentence Review Board approved conditions for Pre-SRA and Community Custody Board offenders).
- Obey all laws. Causes under court/Indeterminate Sentence Review Board Jurisdiction require imposition by the court/ISRB.
- Based on eligibility, enter and successfully complete identified interventions to assist you to improve your skills, relationships, and ability to stay crime free.

Offenders from out of state (FOS), who are being supervised by DOC, and who have been designated as being "victim sensitive" by the sending state, must secure written permission from their CCO prior to changing address, returning to the sending state, or obtaining a travel permit. CCOs will **notify the Washington Interstate Compact Office** of the change or request.

COURT ORDERED CONDITIONS/REQUIREMENTS

- I have received a copy of the Judgment and Sentence on this cause, and have read and understand its requirements.

Sign with initials

COURT ORDERED CONDITIONS

Order Type	Condition	Effect	End Date
Court Ordered	Pay all court ordered legal financial obligations and/or restitution as directed by CCO	9/10/2010	
Court Ordered	Obey all municipal County State Tribal and Federal laws	9/10/2010	
Court Ordered	Have no contact with specified businesses	9/10/2010	
Court Ordered	Remain within or outside of geographical boundaries as specified	9/10/2010	
Court Ordered	Submit to DNA blood draw and testing as directed	9/10/2010	
Court Ordered	Notify CCO of any change in employment	9/10/2010	
Court Ordered	Advise CCO of change of address.	9/10/2010	
Court Ordered	Do not have direct or indirect contact with any victim	9/10/2010	
Court Ordered	Obtain permission from CCO before changing residence	9/10/2010	
Court Ordered	Do not purchase own have in your possession or under your control any firearm or deadly weapon	9/10/2010	
Court Ordered	Perform affirmative acts as ordered by court and/or Department of Corrections	9/10/2010	
Court Ordered	Pay cost of supervision fees to Department of Corrections as directed by CCO	9/10/2010	
Court Ordered	Do not use/possess/consume any controlled substances without a lawfully issued prescription	9/10/2010	
Court Ordered	You shall advise your CCO of any prescription medications.	9/10/2010	
Court Ordered	Do not consume controlled substance except pursuant to lawfully issued prescriptions	9/10/2010	
Court Ordered	Maintain lawful employment & provide proof of employment to DOC staff as directed	9/10/2010	
Court Ordered	Maintain Educational	9/10/2010	
Court Ordered	Report to and be available for contact with assigned community corrections officer as directed	9/10/2010	

FINANCIAL OBLIGATIONS (NOT APPLICABLE TO FOS CASES)

- The court has ordered me to pay Legal Financial Obligations (LFOs), including accrued interest. I am required to make payments under the following cause numbers and in the amounts listed:

Restitution: <u>TBD</u>	Court Costs: <u>\$100.00</u>	Attorney Fees: <u>\$0.00</u>
Fine: <u>\$0.00</u>	Victim's Compensation: <u>\$500.00</u>	Other: <u>\$0.00</u>
Drug Fund: <u>\$0.00</u>	Lab Fee: <u></u>	

I agree to pay not less than _____ per month beginning _____ to the Clerk of _____ County, located at _____ until my financial obligation is paid in full.

COMMUNITY SERVICE HOURS:

☐ Complete _____ hours of community service at a rate of _____ hours per ☐ week ☐ month as directed by the DOC. Report as directed to the DOC.

REPORTING INSTRUCTIONS:

- I am required to report and be available for contact with the assigned CCO as directed until instructed to no longer report, or a court order is issued closing the case.
 - DOC staff may make contact with you outside of the office at your residence, at your place of employment, or other known areas that you may be located at.
- I am required to report in person to the Department within one business day of release from any confinement or a warrant may be issued for my arrest.

Reporting Instructions: In person on day(s) listed below, or as otherwise directed by CCO.

☐ 1st
☐ 3rd☐ 2nd
☐ 4th☐ MONDAY ☐ TUESDAY
☐ WEDNESDAY ☐ THURSDAY ☐ FRIDAY☒ Other:*AS directed by CCO***COST OF SUPERVISION/SUPERVISION INTAKE FEE:**

- I will be assessed a Cost of Supervision (COS)/Supervision Intake Fee once my risk level classification has been determined. If my date of offense was prior to October 1, 2011, the amount charged will vary depending on my risk level classification and the length of supervision ordered. If my date of offense was on or after October 1, 2011, I will be charged \$475 for each cause for which I am under supervision. I will be provided with a billing statement which will include my COS/Supervision Intake Fee information and the balance due amount.
- I agree to pay not less than *\$20* per month beginning *8/13* until my COS/Supervision Intake Fee balance is paid in full. Beginning *8/13*, I will pay my COS/Supervision Intake Fee in one of the following ways: By mail in the form of a personal check, cashier's check, or money order, with my name and DOC number printed on it, made payable to: Department of Corrections, PO Box 9700, Olympia WA 98507-9700; through JPay at www.ipay.com; by phone at 1-800-574-5729; or at any MoneyGram

NOTICES:

- Firearms:** I have been advised and understand that if I have been convicted of a crime in category listed below I am prohibited by law from owning, possessing, receiving, shipping, or transporting a firearm, ammunition, or explosives. I understand the prohibition extends to every sort of gun, rifle, or explosive device or similar device, including the frame or receiver of firearms. I understand that this may also be a violation of my supervision per RCW 9.94A.505.

- Any Felony Offense
- Misdemeanor Offense (RCW 9A.10.040, 10.99.020) – Includes the following misdemeanor offenses, when committed by one family or household member against another, committed on or after July 1, 1993:
 - Stalking* (RCW 9A.46.110)
 - Assault 4 (RCW 9A.36.041)
 - Reckless Endangerment 2 (RCW 9A.36.050)
 - Coercion (RCW 9A.36.070)
 - Violation of a Protective Order-No Contact (RCW 10.99.040)*, (RCW 26.50.060, 070, 130)

*Can also be a felony offense.

I further understand that I should seek legal advice if I wish to possess a firearm after I am discharged from supervision.

- Body Armor:** I have been advised and understand that, per Title 18, United States Code, Section 931, I am not authorized to possess body armor. I understand that possession constitutes a violation of supervision.
- Arrest, Search, and Seizure:** I am aware that I am subject to search and seizure of my person, residence, automobile, or other personal property if there is reasonable cause on the part of the Department of Corrections to believe that I have violated the conditions/requirements or instructions above. I am also aware that, for the safety and security of Department staff, I am subject to a pat search or other limited security search without reasonable cause when I am in, on, or about to enter Department premises, and when I am about to enter a Department vehicle.
- Threats to Staff:** I am aware that if I threaten any Department of Corrections staff or contractors I may be arrested and charged under RCW 9A.46.020, and that this may also be a violation of my supervision. *KA*
Sign with initials
- Obstructing a CCO:** I am aware that if I obstruct a CCO who is performing their official duties I may be arrested and charged under RCW 9A.76.020 and that this may also be a violation of my supervision. *KA*
Sign with initials
- Assaults on Staff:** I am aware that if I assault any DOC employee or contractor I may be arrested and charged under RCW 9A.36 and that this may also be a violation of my supervision. *KA*
Sign with initials
- Using Restraints on Pregnant Females:** If I am female, I have received the DOC brochure on using restraints on pregnant women or youth.
- Staff Sexual Misconduct:** I am aware that sexual contact between a DOC offender and DOC employee or contractor is a violation of Washington State Law under RCW 9A.44.160. Any allegation of staff sexual misconduct will be investigated. I understand the Department has a zero tolerance for staff sexual misconduct and that there is no such thing as consensual sex between a DOC employee, contractor, volunteer or any person providing services in a correctional facility or office and a person under correctional supervision. I understand the reporting process for

investigated. I understand the Department has a zero tolerance for staff sexual misconduct and that there is no such thing as consensual sex between a DOC employee, contractor, volunteer or any person providing services in a correctional facility or office and a person under correctional supervision. I understand the reporting process for staff sexual misconduct and that **I may report any staff sexual misconduct to any staff member or by calling 1-800-586-9431.**

- **Imposed Conditions:** I am aware that I must submit a written request to the Field Administrator within 48 hours of being served with a DOC Imposed Condition if I wish to appeal the condition.
- **Access to Residence/Dangerous Animals:** I will allow DOC staff unrestricted access to my residence. This includes the control or securing of dangerous animals.
- **Confinement Expectations:** I have been advised, while on supervision/probation, I am required to comply with all facility rules and regulations of the confining facility for any period of confinement. Failure to abide by facility rules and regulations may be addressed through additional violation hearings and sanctions.
- **Tolling:** I have been advised that those periods that I am unavailable for supervision (i.e., jail, on abscond status) will not count towards my supervision period (FOS Cases subject to Home State rules regarding tolling).
- **Grievance Procedure:** The DOC grievance procedures have been explained to me and I understand them.
- **Computerized Billing System:** I am aware I will receive a monthly bill from the Department of Corrections for each cause number on which I owe Legal Financial Obligations. I understand I am to mail the stub along with my payment to the appropriate County Clerk. (Not Applicable to FOS Cases)
- **Debt:** I have been advised and understand that failure to make payments toward my legal financial obligations as scheduled can result in an increase in my monthly payment rate and/or referral of my case to the County Clerk's Office for collection. Should I fall behind in my monthly payment in an amount equal or greater than the amount payable for one month, the Department of Corrections may issue a Notice of Payroll Deduction. Without further notice, my employment earnings are subject to a Notice of Payroll Deduction and my earnings or property, or both, are subject to an Order to Withhold and Deliver. Any net proceeds obtained through either a Notice of Payroll Deduction or an Order to Withhold and Deliver will be applied to my court ordered financial obligations. (Not Applicable to FOS Cases)

☐ **Registration:** I have been advised and understand the registration requirements for offenders. I have signed DOC 07-023 Registration Notification.

Sign with Initials

I have read or have had read to me the foregoing conditions and sentence requirements which are applicable in my case. Each of these conditions/requirements have been explained to me and I hereby agree to comply with them.

Offender Signature <i>Be Red</i>	Date <i>7-30-13</i>
Current Address <i>44001 Thunder Rd, Benton City</i>	
CCO/Counselor Signature <i>Erin Riso</i>	Date <i>7-30-13</i>
Location Prosser Police Outstation	Telephone (509)786-1500x3114

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: CCI/CCP ONLY: ORIGINAL - Imaging System via local Records COPY - Offender, Field File
ALL OTHERS: ORIGINAL - Field File COPY - Offender

RECEIVED DEC 16 2014

STATE OF IDAHO
Office of the Attorney General
Criminal Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
FAX Number: (208) 854-8074

Transmittal Cover

DATE: December 16, 2014

TO: Nez Perce County
FAX: (208) 799-3058

FROM: Patricia Miller, Appellate Legal Secretary
Kenneth Jorgensen, Deputy Attorney General
Attorney General's Office, Criminal Division
(208) 334-4534

Document Description:

Notice of Appeal
State of Idaho v. Brian E. Neal
District Court # CR-2014-3285
Supreme Court #

Total Number of Pages (Including This Page):

****Please fax a conformed copy of this document to my attention as soon as possible so that I can have it for my records.****

Thank you!
Pat

12-16-14
any faxed
back -
se

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

FILED

2014 DEC 16 PM 1 10

PATTY O. WEEKS
CLERK OF THE DIST. COURT.
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR NEZ PERCE COUNTY

STATE OF IDAHO

Plaintiff-Appellant,

vs.

BRIAN E. NEAL,

Defendant-Respondent.

)
) District Court No. CR-2014-3285
) Supreme Court No.
)

) NOTICE OF APPEAL
)
)
)
)
)
)

TO: BRIAN E. NEAL, THE ABOVE-NAMED RESPONDENT, SCOTT
CHAPMAN, CHAPMAN LAW OFFICES, PO BOX 446, LEWISTON, ID 83501
AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the
above-named respondent to the Idaho Supreme Court from the OPINION AND
ORDER ON MOTION TO SUPPRESS, entered in the above-entitled action on
the 7th day of November, 2014, the Honorable Jeff M. Brudie presiding.

2. The Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(7), I.A.R.

3. Preliminary statement of the issue on appeal: Did the district court err by concluding that the officer unlawfully extended a lawful traffic stop where the evidence shows the officer did so to investigate whether the defendant was on probation in a neighboring state?

4. To undersigned's knowledge, no part of the record has been sealed.

5. Appellant requests the preparation of the following portions of the reporter's transcript: a) Hearing on the motion to suppress held October 31, 2014 (no court reporter present, estimated number of pages unknown).

b) Hearing on the motion for reconsideration held December 3, 2014 (Linda Carlton, court reporter; less than 100 pages estimated).

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:

LINDA CARLTON
Court Reporter
PO Box 896
Lewiston, ID 83501

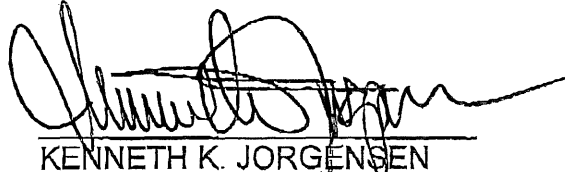
(b) That arrangements have been made with the Nez Perce County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 16th day of December, 2014.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 16th day of December, 2014, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JEFF M. BRUDIE
Nez Perce County Courthouse
P.O. Box 896
Lewiston, Idaho 83501

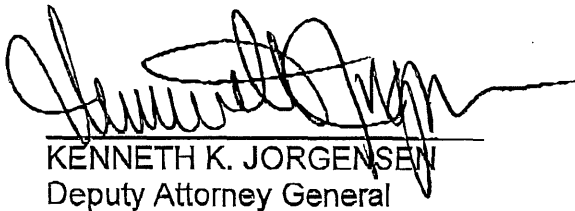
DANIEL L. SPICKLER
Nez Perce County Prosecutor's Office
P.O. Box 1267
Lewiston, Idaho 83501

GREGORY R. HURN
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501

LINDA CARLTON
Court Reporter
Nez Perce Courthouse
P.O. Box 896
Lewiston, Idaho 83501

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

Gregory R. Hurn
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83501
Telephone: (208) 746-7060
Fax: (208) 746-2660
Idaho State Bar # 8753

FILED
2015 JAN 6 PM 4 17
PATTY O. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

Attorney For Defendant/Respondent

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2014-03285
)	
Plaintiff/Appellant,)	
)	
vs.	)	MOTION TO WITHDRAW AND TO
	)	APPOINT STATE APPELLATE
Brian E. Neal,	)	PUBLIC DEFENDER
)	
Defendant/Respondent.)	
)	
)	

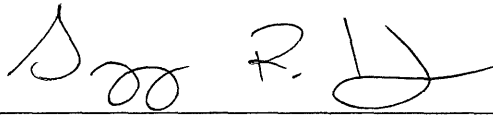
COMES NOW, Gregory R. Hurn of Kwate Law Offices, PLLC, pursuant to Idaho Code § 19-870 (1)(b), and hereby moves the court for an order appointing the State Appellate Public Defender's Office to represent the Defendant/Respondent, in all further appellate proceedings and allowing Kwate Law Offices, PLLC to withdraw as counsel of record. This motion is brought on the grounds and for the reasons that the Defendant/Respondent is currently being represented by the office of the Public Defender, Nez Perce County; the State Appellate Public Defender's Office is required by statute to represent the Defendant/Respondent in all felony appellate proceedings; and

MOTION TO WITHDRAW AND
TO APPOINT STATE APPELLATE
PUBLIC DEFENDER

it is in the interest of justice, for them to do so in this case since the Defendant/Respondent is indigent, and any further proceedings on this case will be appeals.

DATED this 5th day of January, 2015.

KWATE LAW OFFICES, PLLC
Attorney for Defendant/Appellant

By 

Gregory R. Hurn

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2015, a true and correct copy of the foregoing instrument was:

☒ Mailed
☐ Faxed
☒ Hand Delivered
☐ Overnight mail

to the following:

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501

Idaho State Appellate Public Defender's Office
3050 N Lake Harbor Lane, Suite 100
Boise, Idaho 83703

Lawrence Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720

KWATE LAW OFFICES, PLLC

By 
Gregory R. Hurn

FILED

2015 JAN 9 AM 7 46

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	CASE NO. CR 2014-03285
)	
Plaintiff/Appellant,	)	ORDER ALLOWING WITHDRAWAL
	)	OF ATTORNEY AND APPOINTING
vs.	)	STATE APPELLANT PUBLIC
	)	DEFENDER'S OFFICE
Brian W. Neal,)	
)	
Defendant/Respondent.)	
)	
)	

The attorney for the Defendant/Respondent having moved the court for an order allowing him to withdraw from her representation of the Defendant/Respondent in said matter, and good cause appearing therefor;

IT IS HEREBY ORDERED that Gregory R. Hurn of Kwate Law Offices, PLLC, and hereby is, allowed to withdraw as the attorney for the Defendant/Respondent in said matter.

IT IS HEREBY FURTHER ORDERED that the Idaho State Public Defender's Office is hereby ordered to represent the Defendant/Respondent in any proceedings for appeal in said matter.

DATED this 8 day of January, 2015.



Judge

ORDER ALLOWING WITHDRAWAL
OF ATTORNEY AND APPOINTING
STATE APPELLANT PUBLIC
DEFENDER'S OFFICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of January, 2015, I caused a true and correct copy of the foregoing to be delivered to the following:

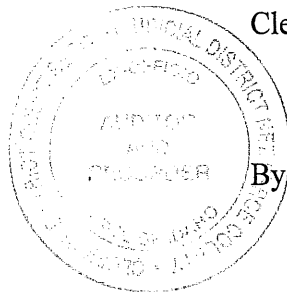
Kwate Law Offices, PLLC
1502 G Street
Lewiston, Idaho 83401
(Court Basket)

Idaho State Appellant Public Defender's Office
3050 N Lake Harbor Lane, Suite 100
Boise, Idaho 83703

Nez Perce County Prosecutor's Office
Post Office Box 1267
Lewiston, Idaho 83501
(Court Basket)

Lawrence G. Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720-0010

Patty O. Weeks,
Clerk of the District Court



By

Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
PLAINTIFF-APPELLANT,	)	SUPREME COURT NO. 42806
)	
v.	)	CERTIFICATE OF EXHIBITS
)	
BRIAN E. NEAL,)	
)	
DEFENDANT-RESPONDENT.)	

I, PATTY O. WEEKS, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for Nez Perce County, do hereby certify that the following list is a list of the exhibits offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Court this 23rd day of January 2015.

PATTY O. WEEKS, Clerk

By

Deputy

CERTIFICATE OF EXHIBITS

Exhibit Summary

Case: CR-2014-0003285

State of Idaho vs. Brian Ellis Neal

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	State's Exhibit 1A - Picture of items contained in black sock - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
2	State's Exhibit 1B - Picture of scale and metal measuring cup - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
3	State's Exhibit 1C - Picture of notebook found in backpack - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
4	State's Exhibit 1D - Picture of writing in the notebook found in backpack - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
5	State's Exhibit 1E - Picture of writing on Red Lion notepad - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
6	State's Exhibit 1F - Second Picture of writing on Red Lion notepad- Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
7	State's Exhibit 1G - Picture of cash found in defendant's wallet - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		
8	State's Exhibit 2 - ISP Forensic Controlled Substance Analysis Report - Admitted 5/14/14	Admitted	To Deanna/Britt on appe		
		Assigned to:	[none] April Smith		

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,	)	SUPREME COURT NO. 42806
)	
vs.	)	CLERK'S CERTIFICATE
)	
BRIAN E. NEAL,)	
)	
Defendant-Respondent.)	

I, Patty O. Weeks, Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That the following will be submitted as exhibits to this record on appeal:

Transcript of Preliminary Hearing filed 5/27/2014

Copy of CD Labeled "Exhibit B" attached to Brief in

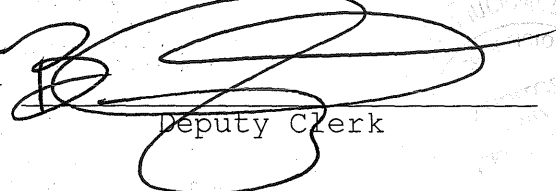
Support of Motion to Suppress Evidence filed 9/8/2014.

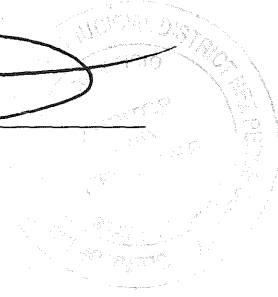
CLERK'S CERTIFICATE

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court this 23rd day of January, 2015.

PATTY O. WEEKS, Clerk

By


Deputy Clerk



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,
Plaintiff-Appellant,
vs.
BRIAN E. NEAL,
Defendant-Respondent.

Supreme Court Case No. 42806

CERTIFICATE OF SERVICE

I, PATTY O. WEEKS, the undersigned authority, do hereby certify
that I have personally served by US Mail, hand delivery or by
electronic mailing one copy of the following:

CLERK'S RECORD

REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

SARA B. THOMAS

sthomas@sapd.state.id.us

ATTORNEY FOR RESPONDENT

BOISE, ID

LAWRENCE G. WASDEN

patricia.miller@ag.idaho.gov

ATTORNEY FOR APPELLANT

BOISE, ID

PATTY O. WEEKS
Clerk of the District Court

Date of Service

2/18/2015

By

Deputy Clerk

CERTIFICATE OF SERVICE